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ABSTRACT

This document records the oral and written testimony of witnesses who testified at two Congressional hearings on waste and misuse of federal on-the-job training funds provided through the Job Training Partnership Act (JTPA). Specifically, the hearings focused on the case of the extensive use of on-the-job training funds by American Home Products (AHP) in Puerto Rico. Witnesses, who included representatives of the General Accounting Office, the Department of Labor, the Puerto Rican government, and former employees of American Home Products, pointed out that many companies, especially American Home Products, took advantage of JTPA funds to hire workers they would have hired anyway, to train high school graduates instead of the more disadvantaged persons who were targeted by JTPA, and to use JTPA funds for excessively long training periods for simple jobs. The witnesses also alleged that American Home Products, and many other companies, used JTPA funds to train workers in Puerto Rico so that they could close older plants with more experienced workers. The allegations were denied by the chairman of American Home Products, who also was a witness at the hearings. (KC)

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WASTE AND MISUSE OF FEDERAL ON-THE-JOB TRAINING FUNDS

ED357246

HEARINGS

BEFORE THE

EMPLOYMENT AND HOUSING SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

JULY 30 AND AUGUST 5, 1992

Printed for the use of the Committee on Government Operations

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WASTE AND MISUSE OF FEDERAL ON-THE-JOB TRAINING FUNDS

THURSDAY, JULY 30, 1992

HOUSE OF REPRESENTATIVES,
EMPLOYMENT AND HOUSING SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2247, Rayburn House Office Building, Hon. Tom Lantos (chairman of the subcommittee) presiding.

Present: Representatives Tom Lantos, Matthew G. Martinez, Rosa L. DeLauro, Charles J. Luken, and Ronald K. Machtley.

Also present: Stuart Weisberg, staff director and counsel; Lisa Phillips, professional staff member; June Livingston, clerk; and Christina J. Tellalian, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN LANTOS

Mr. LANTOS. The Subcommittee on Employment and Housing will please come to order. At today's hearing the Employment and Housing Subcommittee will focus its attention on the operation of the Job Training Partnership Act [JTPA], our Nation's major employment training program. The JTPA, enacted by the Congress in 1982, provides Federal funding for State and local agencies, in cooperation with the private sector, to train economically disadvantaged adults and young people for jobs and to develop their employment seeking skills.

We will be examining how on-the-job training [OJT] funds, are being used, whether these funds are benefiting the economically disadvantaged and whether these scarce funds are being wasted. Only 6 percent of those individuals eligible for JTPA actually receive training assistance because of the funding level. With so many unserved, it is crucial that these limited funds not be wasted and that they be targeted to those most in need.

As we often do at our subcommittee hearings, we will be looking at a specific case example, namely the extensive use of on-the-job training funds by American Home Products [AHP], in Puerto Rico.

In 1990, American Home Products closed its plant in Elkhart, IN leaving about 800 workers without jobs. At the same time, American Home Products prepared to expand operations at its plant in Guayama, Puerto Rico to manufacture many of the same over-the-counter pharmaceutical products. In 1988, AHP entered into contracts with the Puerto Rico Department of Labor and Human Resources to subsidize wages of the new employees at the Guayama

plant who were trained in skills ranging from general maintenance, janitorial work, to machine operators.

The subsidies in many of these contracts were for 50 percent of the wages for 50 weeks. While the number of workers to be trained was subsequently reduced to 78, American Home Products received nearly $250,000 in Federal training subsidies. In this case, American Home Products received a gift from the American taxpayer in the amount of almost $250,000. Uncle Sam gave AHP about $250,000 to do something it was going to do anyway, namely, to hire and to train people from the area, high school graduates, to work in their Puerto Rico plant.

It is important to keep in mind the intended purpose of the Job Training Partnership Act. I am going to read some of the requirements contained in section 141 of the act. I am quoting. "Each job training plan shall provide employment and training opportunities to those who can benefit from, and who are most in need of, such opportunities and shall make efforts to provide equitable services among substantial segments of the eligible population.

"Funds provided under this act shall only be used for activities which are in addition to those which would otherwise be available in the area in the absence of such funds."

And now the most critical phrase, "No funds may be used to assist in relocating establishments, or parts thereof, from one area to another unless such relocation will not result in unemployment in the area of original location or in any other area." End quote.

Our review of some of the JTPA contracts between American Home Products and Puerto Rico raise many troubling questions. For example it provides Federal training moneys for 10 chemist/pharmaceutical positions, jobs which require a bachelor of science degree in chemistry, a chemist license, and being bilingual, both orally and in writing.

This does not appear to be an effort to target Federal training moneys to those most in need. Rather it appears to be a wasteful unneeded, unnecessary subsidy, a gift to a large, profitable company that would have filled these positions with local workers regardless.

Job training partnership funds were wasted and the training contracts between American Home Products and Puerto Rico provided for training periods that are far too long. Does it really take 16 hours of training to show a high school graduate how to use a dust mop? Incredibly, it also provides for 10 hours of Federal training moneys to tell janitors about their compensation and benefits. It is probably those complex stock option benefits that take so long to explain. There is no consistency. Machine packagers get 12 hours of compensation and benefits training while machine operators only get 10.

Even with a question and answer period, I cannot imagine spending 12 hours to tell someone, particularly an individual with a high school diploma, about their compensation and benefits. And people think lawyers bill for unnecessary or inflated numbers of hours.

These problems are not unique to American Home Products or to Puerto Rico. We will hear testimony from the General Accounting Office and from the Department of Labor's inspector general about

other local agencies wasting job training partnership funds by developing questionable on-the-job training contracts. GAO makes reference to a 6-month on-the-job training contract to train a car wash attendant.

Finally, because of a longstanding board meeting, John Stafford, president and CEO of American Home Products could not appear here today. In order to accommodate Mr. Stafford, I have scheduled a second day of hearings for Wednesday, August 5, for him to testify.

We will also hear testimony on that date from Ileana Echegoyen, the former director of the labor agency in Puerto Rico which administers the program and other representatives of the Commonwealth of Puerto Rico. I am now pleased to call on the ranking Republican on the subcommittee, Mr. Machtley.

Mr. MACHTLEY. Thank you very much, Mr. Chairman. I would like to commend you for holding this hearing and looking at what we are doing in the area of job training and preparing people for the future work needs of this Nation.

As predicted, there will be an increasing labor shortage beginning sometime in the 1990's and going through the year 2000. A labor force which is becoming more diverse must have highly skilled and well-educated people in order to compete. No one can read Michael Porter's book, "The Competitive Advantage of Nations" nor listen to what is going on in the world and not be struck with the reality that we must train our people not just to flip hamburgers and push mops, but to have the most competitive higher priced jobs in a very competing, shrinking world.

We are relying on the Job Training Partnership Act to see us through this period of training in this Nation. That means that all of the programs that the Job Training Partnership Act provide must be efficient, they must be effective, and they must use our tax dollars, which are becoming scarcer and scarcer, in ways which are very, very efficient.

A GAO report has some very condemning statements relative to how things have occurred. I look forward to hearing testimony to determine the reality of what occurred with American Home Products and some of the programs which they had. As we know, JTPA must train, must educate, and it must do more than just treat people as a commodity to place in a low paying job.

Where there are abuses, we must seek them out. Where there are inefficiencies, we must eliminate them. Where there are needs for greater oversight, we must be the ones to perform that function. For that purpose, we are holding this hearing today, not to condemn the program, not to condemn all the very fine people who are involved in this program, but to, through an oversight review, try and make it even more efficient than it may now be.

We must look at all stratas of people who are seeking jobs and training from the high school dropout to the 50 year old machinist who finds himself displaced because of a downsize in the Defense budget. And frankly, I think it is a waste of time to begin pointing fingers and blaming either industry or governments for failures, but to seek out where we can improve, where we can make changes, and to make them.

I am confident with the input of our witnesses today we will have a new insight into how moneys are being used to train people and what must be done in order to make it more efficient and more effective. As the chairman has said, it certainly does not take hours of training to push mops and to wash cars and to do other low level skilled jobs, but apparently there is a substantial amount of time being expended in training for these types of positions.

I look forward to hearing the rationale for that. I am sure the other committee members do, too. Thank you very much, Mr. Chairman.

Mr. LANTOS. I want to thank my friend. Next I want to call on the former chairman of the Employment Opportunities Subcommittee of this Congress. He is one of the most knowledgeable colleagues in this field, Congressman Martinez.

Mr. MARTINEZ. Thank you, Mr. Chairman, and again, like Mr. Machtley, I want to commend you for holding this hearing. I want to start off by apologizing that in about 5 minutes or as soon as I finish my statement, I have got to leave for the Education and Labor full committee on a markup which is taking place on a couple of important bills.

But I will return as soon as possible because I am very interested in hearing the testimony of the witnesses today regarding these particular issues you raise.

Let me say too that, you know, from the beginning—for many years I should say, I have always felt that public schools in all cases didn't do as much as it could to prepare young people for the world and the work force or for many kinds of jobs. Many young people graduate from high school without having sufficient basic skills to receive specialized training in anything, much less get anything more than a basic job that takes a lot of muscle but not much brain power.

But I was heartened by the fact when I got here in Congress 10 years ago, that we were, at that time, just passing the Job Training Partnership Act. And the promise of—the Job Training Partnership Act held out a lot of promise for those people who had dropped out of school, who had become wayward through no fault of their own and were needing some direction in their lives.

In that regard, JTPA really was created to help young people find alternatives by teaching them the work ethic and skills necessary to succeed in the work force. But I don't believe we can help kids who need the JTPA when—and I guess the question is, how can we help these kids who need JTPA when the finite job training dollars that are there are being spent on people who have job skills? That wasn't the intent of JTPA.

These people have job skills that are necessary to find work on their own. I don't see how we can help these kids when money allocated for on-the-job training is spent instead by greedy employers as long-term subsidies for the salaries of low skilled workers. That clearly was not the intent of JTPA.

It is clear that we can't, and we can't continue to allow those who are job ready to be served before the least job ready. The intent has always been—in the new amendments we define that even more clearly—to target those least job ready. And we can't allow employ-

ers to use the on-the-job training dollars as a salary subsidy without taking people who are at the greatest risk in our society.

The House and Senate versions of the JTPA amendments respond to the abuse of the on-the-job training program by tightening the maximum number of hours allowable for on-the-job training hours by occupation and the bill mandates the target participants be those who are least job ready.

In that regard, we have required in the amendments that there be one or more barriers to employment to be eligible.

Those employment barriers are lack of basic skills, are long term—being long-term unemployed, et cetera. The thing is that we need to focus on those that are least job ready. People with job skills can always find jobs. It may take them a little longer but that wasn't the idea of JTPA.

Indeed, Mr. Chairman, you and I and John Conyers have, I believe, made a great contribution to those amendments by including those provisions against discrimination, against minorities and women and the JTPA was serving those minorities and women.

In sum, in attempting to do our part through the JTPA amendments, we also, in hearings like this, do our part by reaffirming the original commitment to JTPA, by pointing out that helping the most disadvantaged members of our community gain job skills can indeed help us all.

I am not sure that the Department of Labor has been as diligent as it could be, even from the beginning. Even from the beginning it took them a long time to gear up to even provide technical assistance to all of the new SDA's—all of the new PIC's and service providers that were coming on board with the new program. They have done somewhat—or made some attempts to correct some of the failures of the past, but I don't think they have really gone as far as they can.

In fact, both the General Accounting Office and the DOL inspector general have documented the department's inability to oversee widespread waste, abuse in the JTPA program.

I look forward to hearing today from someone whom I have known in the time I have been in Congress and had the responsibility for 6 years of the Subcommittee on Employment and Opportunities that has direct oversight jurisdiction over JTPA, Bob Jones, who I understand will be here later to testify. I am anxious to hear from him how the DOL will respond to the accountability mandates of the JTPA amendments when they are passed in the law. One of those is still over in the Senate but surely will be out soon and become law.

I am also interested in hearing about the specific allegations of abuse in the on-the-job training program at the American Home Products facility in Puerto Rico. Puerto Rico's high unemployment and dropout rates impel us to insure that the Commonwealth is getting the most training dollars that it possibly can, but not at the expense of other people in the United States and other people and other companies who are established here but see fit to move to Puerto Rico to take advantage of a Federal program that was not intended to be used that way.

Mr. Chairman, I commend you again for holding this crucial hearing and I look forward to the people who are going to testify today.

Thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much, and we do hope you will be able to come back, Mr. Martinez, as the hearing unfolds. I am delighted to call on my good friend and colleague from Connecticut, Congresswoman Rosa DeLauro.

Ms. DELAURO. Thank you. The Job Training Partnership Act was enacted in 1982 to provide vital job training assistance to disadvantaged youths and to adults. The act is really our Nation's—it is our primary training program. In fact, if there has been any area of neglect in the last 10 or 12 years in this Nation, it has been on the whole area of job training. We have really turned our back on job training.

However, there has been a great deal of abuse of JTPA funds, especially in the on-the-job training program funds. And today's hearing focuses on the alleged misuse of JTPA OJT funds by the American Home Products Corp. And these are charges that need to be examined.

It should be noted, and my colleague, Mr. Martinez, did note that both the House and the Senate have already passed legislation to address the issue of OJT abuse. This legislation has been pending in conference since May, and I hope that this hearing will provide some impetus to get this bill out of the conference and onto the President's desk. I think that that is the direction that we need to go in.

I look forward to hearing from our witnesses today, from the chairman of the American Home Products Co., and a representative from Puerto Rico in the next hearing next week.

Thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much. Before calling the first panel, I would like to express my appreciation to Ms. Lisa Phillips and Mr. Stu Weisberg, our chief of staff, for the outstanding job in preparing this hearing.

The first panel consists of Mr. Robert Wages, president, Oil, Chemical and Atomic Workers Union; Ms. Connie Malloy, former employee, American Home Products; Ms. Bernice Gilbert, former employee of American Home Products.

Will you please come up to the witness table? If you will please raise your right hand.

[Witnesses sworn.]

Mr. LANTOS. We are pleased to have all four of you. Your prepared statements will be entered in the record in their entirety. We will begin with you, Mr. Wages, and I would be grateful at the outset if you would identify the other gentleman on the panel.

STATEMENT OF ROBERT WAGES, PRESIDENT, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, ACCOMPANIED BY GREG LEROY, ADVISOR

Mr. WAGES. Thank you, Mr. Chairman. The additional person with us up here to offer us technical advice from time to time is Mr. Greg LeRoy who has acted as an advisor to OCAW for a num-

ber of years, and specifically has been involved in this ongoing situation with American Home Products.

Mr. LANTOS. We are pleased to have you.

Mr. WAGES. Let me introduce to my immediate right, Connie Malloy, former president of the local union in Elkhart that represented American Home Products workers in northern Indiana. To my left is Bernice Gilbert, who is a worker at the facility, a victim of the layoff in what we consider to be pretty tragic conduct on the part of American Home Products during the last few years.

I am going to express my union's appreciation now for you holding these hearings. We think it is an important subject and I will be returning to my written testimony here in a moment to summarize what I had presented to the subcommittee as some of our basic issues that we would like to raise.

Mr. LANTOS. Could you pull the mike a little closer?

Mr. WAGES. As the Chair might know by now, we in the Oil, Chemical and Atomic Workers International Union have been involved in a dispute with American Home Products for the last several years, and it centers around the moving of the Elkhart facility, production facility, from Elkhart, IN to Puerto Rico for what we believe were unjust reasons and certainly prompted by American Home Product's desire to take advantage of a very lucrative tax arrangement that it had negotiated in Puerto Rico.

We, yesterday, reached a settlement in lawsuits which had been filed. That settlement is subject to court approval in Puerto Rico. It was a substantial settlement in the amount of about $24 million. We had previously negotiated certain effects to the employees at Elkhart as a result of the closure.

As a consequence of that, I have been a little troubled about the characterization here today put to me at least, that my testimony and the testimony that these other people are going to offer is to single out American Home Products, and I want to try to put it in perspective. It has been a long, difficult dispute. It has, in some measures, reached the point of resolution and some equity and justice would prevail for the workers in Elkhart who have been displaced.

But this testimony, what we are going to talk about here today, and why we are here today, isn't about American Home Products solely. It is about a system. It is about what we found out during the course of the dispute that verified some of our worst fears about what goes on in this country.

So we are here not because of the dispute but because of some of the things we found out in the course of defending our rights to our jobs. And we are here today to tell a story, but it is not just a story about American Home Products. It is a story about American corporations who treat their people like litter, who feel they have a license to move away, to create new jobs; and to add insult to the tragedy of people being dislocated, they take money, use it in the JTPA job training program to subsidize a runaway plant.

Now, while American Home Products is what we are going to talk about today because we have some firsthand knowledge about it, there are 25 other companies that we have documented that went to Puerto Rico and we are going to suggest to you, I am going to suggest to you that the very same thing is going on as we found

out in the case of American Home Products, is going on with those other 25 employers who moved to Puerto Rico, who ran away in terms of their responsibility to workers here in the mainland to set up shop in Puerto Rico to engage in production.

We are here about a system that doesn't make anybody accountable for taking that money and running. We are here to talk about a system that essentially measures success on the basis of how well you cheat the system. And we are here to suggest that the institutions of government, the Congress, although certainly not all the people in it, the Labor Department, certainly not everyone who works there, the Treasury, the IRS and others, systematically permit this kind of conduct.

And we are here to suggest very strongly that it is time that somebody, as somebody suggested not too long ago, clean out the barn, because we have a problem here that transcends one individual company or this situation in Elkhart, IN. It is a situation that is systemic, and that is what we hope to address.

These two people here with me, the workers from Elkhart, I only want to mention that—how extraordinarily proud of them I am. For them to have the will and the nerve to continue to try to seek justice in the face of the kind of odds that they have been faced with is a pretty daunting task for anybody. I get paid to do it.

They have to live with it every single day, and I am so very, very grateful that the committee is going to hear from these people because these are the people who wind up bearing the brunt of the kind of conduct that we are here to talk about, the victims, real life people from Elkhart, IN who gave 20 years or more of their life to a company that picked up, moved to Puerto Rico, and as I said before, to add insult to injury, decided to take some American tax money to help subsidize the move.

So we are delighted to be here to share with you some of what we know. When we started examining the situation at Elkhart and the situation with American Home Products and the situation in Puerto Rico we kind of all put it together, we came to some pretty stark conclusions fairly quickly.

One, it appeared to us very clearly that JTPA money was being used to subsidize the work force in Puerto Rico that had been established as a result of moving substantial production from Elkhart, IN to Puerto Rico, item No. 1. We felt that was unlawful and wrong, so we, over the course of this dispute, have tried to raise this issue to a level to where the Congress and the people who enforce the law can react to it.

Once we came to that conclusion, we then examined, well, what are they saying that the training requirements are in Puerto Rico? It took us quite some time to be able to find out exactly what American Home Products was suggesting the training requirements were, but when we obtained the information with respect to the issue of what they were requiring for training in Puerto Rico, we found an amazing thing, and the amazing thing was the total lack of comparability between the same work being done in Puerto Rico and the work that had already been done in Elkhart.

I mention in my testimony huge disparities suggesting the janitors require so much more training than we had ever heard of as these people were production workers in Elkhart, IN. The same for

machine operators and machinists. It is cited specifically in the testimony.

When we started examining that, we concluded that the amazing area of consistency in what American Home Products was doing was essentially using up the money, it appeared to us, manufacturing the training mandate in consideration of how much funds were available. Consequently they wound up getting subsidized to the tune, I think you mentioned, of $250,000, but that is not the end of the story.

As we mention in my written testimony, the predicate for moving the work to Puerto Rico was to acknowledge moving the production from Elkhart to Puerto Rico based upon the tax incentives that they could acquire in Puerto Rico, bringing back the profits they make tax-free to the United States.

We can establish, Mr. Chairman, that the production was moved. We can establish that the very work, much of the very work being done in Guayama, Puerto Rico was being done in Elkhart, IN. We can establish, and you will hear some of it from Bernice and Connie today, that the training for workers in Elkhart, under a union contract, was a maximum of about 28 weeks. Yet, some of these jobs when you went to Puerto Rico you saw training periods of 50 weeks for a machine operator.

And even with respect to those jobs, there was internal inconsistency as between one application the company submitted versus another application that the company submitted.

All in all, three glaring things have occurred to us. One, you have a situation where there was a blatant violation of the mandate not to subsidize training where work has been moved from one job market to another, No. 1. No. 2, when you examine the specifics of the training curriculum, you find absolutely no basis between the reality of the jobs and the training required. That, again, is detailed in my written testimony and I hope you ask Connie and Bernice questions about the intention of the training because they are pharmaceutical production workers who can tell you how much training it took.

We believe, and my written testimony suggests, that even the recent attempts of the company up in Mason, MI deserve some attention, where it appeared to us that the company, once again, was suggesting to manufacture training to obtain JTPA money. We lay out all these problems that we have discovered in the case of American Home Products, and inevitably you have to come to a conclusion that if there are all these problems, what are the solutions? And in my written statement we propose several, and I want to touch on those, but try to relate them back to what we have experienced and found.

It seems to us that we have to have, first and foremost, some reporting measure and some investigation of applications. In this case, it seems to us that had the Puerto Rican authorities or the Department of Labor or anyone else with jurisdiction in this situation taken the time to examine the requests for the training funds, it would have been glaringly obvious what had happened in terms of the transfer of the work.

The production of certain of the products being manufactured in the Puerto Rican facility had been manufactured and produced to-

tally in Elkhart, IN. A cursory examination of that fact would have revealed at least a signal, a signal that production and jobs had moved from one market to another market.

Mr. LANTOS. Mr. Wages, if I might ask you to suspend for a few minutes because we have to cast our vote and then we will resume subsequent to the recess.

[Recess taken.]

Mr. LANTOS. The subcommittee will resume. Mr. Wages, you were about to conclude, I think, your recommendations.

Mr. WAGES. Thank you, Mr. Chairman. First of all I would like to correct a misstatement I made awhile ago when I was rattling off training times. I mentioned 28 weeks and I should have said 28 days. Sometimes it is wishful thinking, but my written testimony is accurate.

I was mentioning when we took the brief break that a cursory examination of what was going on in the application would have revealed certain things, and the products that were transferred from Elkhart down to Guayama, Puerto Rico, were very high profile products. We are talking about things that the average consumer sees everyday and the people who would have examined that facility would have found that out, Advil, Dristan, you hear about them all the time, and it would have caused at least some bell to go off, some chime to be sounded, that maybe something was running amiss had somebody taken the time to do it.

The other products, Denorex, and it is in my written statement, these are everyday products that everybody, people in Puerto Rico, people throughout the United States would have known about, very high profile, a cursory examination would have revealed a shift of production. It should have been done. You shouldn't be giving out money to a training program that violates the mandate of the law without some kind of examination of what is going on.

Any time employees are affected, there has to be a requirement that there be total disclosure. There ought to be not only disclosure of what the application is for JTPA money, but there ought to be a requirement of notification within the corporation to bargaining units where there is a potential impact.

You start from the premise that you shouldn't use JTPA money in training or subsidizing training where jobs are moved in the first place. But if there was notice, if there was disclosure, if there was an opportunity for a union for ambitious employees to stand up and say, hey, wait a minute, don't use our tax money to train somebody in another job market when we have been doing the job here all along.

There is no provision for that in the law. There ought to be. There ought to be a way, through a disclosure process, a notice process, for employees or their representatives to be able to challenge the receipt of this kind of money where there is evidence and belief that the money is being used to subsidize a relocation of work.

There also ought to be a deterrent. I recall testifying once before in front of this committee, and I suggested that when corporate executives knew about dangerous safety conditions and people got killed, something bad ought to happen to them. Because if I did

that out in the street, knowingly hurt someone, something would happen to me or any other individual who undertook that conduct.

I am a firm believer that the goodness that resides in all people is sometimes more hope than reality. There has to be some basis to argue that if you take money and violate the law, you are going to be held accountable. We have suggested treble damages on a pay back. I am not sure that is enough. That may be a very rational, easy prescription, but I am not too sure that there shouldn't be provisions for criminal fraud.

If I stole from the government or anyone else, there ought to be sanctions, and there are sanctions for all of us folks at the bottom of the ladder. I think we just ought to move the sanctions up to include the folks at the top of the ladder who make conscious decisions that were to take tax money and use it in a way that is clearly in violation of the mandates of the law.

I suppose the final remedy we would seek and make an argument for is independent and impartial review of not only just the application, but the implementation of the application and the aftermath of the application. It is not good enough to say, OK, we are moving—we are going to seek money to train people at this new facility and then very cryptically be able to slowly move jobs into another location.

There has to be ongoing review and accountability and there has to be a process through the Labor Department, through whatever administrative agency the Congress in its wisdom would seek to place this authority to not just look at the application and what happens immediately, that is what we do too often and, in this case, we don't do at all but in a broader sense be able to followup in a period of time so there can't be any ruse or games played by employers.

Those are some of the things that we think we have to see as a remedy if you are really going to get to the bottom of control and accountability and use the money in the way it was intended.

I want to make a couple things clear before I turn it over to Connie Malloy. As a union, we believe sincerely and strongly that worker training and education is as important a mission as one can accomplish. As we go into the next century, I as a trade union leader look to my people for what important issues reside out there in the union halls.

Training and education is an awful important issue to expand your ability to move to be more mobile as workers to have the ability to support the family standard. We support that. We don't support the kind of conduct that we believe exists in this particular case which we suspect exists throughout a number of corporations who have sought to take that tax money for training and subsidizing workers.

And the second thing is—and I want to clear it up here—it has never been asked or intimated by anyone on the committee, but we also support and believe there ought to be job opportunities made available in U.S. territories and possessions. We have no quarrel with creating a climate for economic prosperity to our brothers and sisters in Puerto Rico, none at all.

But there is also an obligation that the cost to be paid and the price to be extracted is not throwing decent people in the street in

the process of doing that and that has been a part of what this struggle has been about.

Mr. Chairman, I appreciate very much your hospitalities, kindness for allowing to us be here. I would like to introduce Connie Malloy.

[The prepared statement of Mr. Wages follows:]

TESTIMONY OF ROBERT E. WAGES, PRESIDENT
OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION
BEFORE THE HOUSING AND EMPLOYMENT SUBCOMMITTEE
CONCERNING THE MISUSE OF FEDERAL JOB TRAINING FUNDS
JULY 30, 1992

Good morning, Chairman Lantos and members of the committee; thank you for the invitation to appear today. I'm Robert Wages, International President of the Oil, Chemical and Atomic Workers International Union. We represent over 100,000 workers in energy, chemical, and related industries. With me today are Connie Malloy, president of our local 7-515 In Elkhart, Indiana and Bernice Gilbert, chief steward of the same local. We are supported today by Greg LeRoy, research director of the Midwest Center for Labor Research.

We are here today to expose a number of abuses of the Job Training Partnership Act by the American Home Products Corporation. During the course of several recent disputes with American Home Products, we came across materials indicating that the company received substantial JTPA on-the-job training grants in Puerto Rico at its Whitehall Laboratories subsidiary plant.

After detailed examination, we have determined that these grants--totaling nearly $217,000--constitute a pattern of abuse by American Home Products Corporation. We will support that conclusion with several types of evidence today, including American Home Products' own application materials as well as evidence from the plant in Elkhart which was abandoned when the work was transferred to Puerto Rico.

We have found several examples of wasted taxpayers' money, including:

** dubious representations to the Puerto Rico Right to Work Administration (or "ADT") for on-the-job training curricula that were inconsistent, far too long and never executed as stated

** violation of JTPA regulations that prohibit the use of training funds to subsidize the movement of work from one labor market to another

** and an attempted misuse of training monies in Mason, Michigan, when the company tried -- well after their hiring dates -- to "train" our members transferring from Elkhart on jobs requiring skills in which they had already demonstrated competency.

Before we present the details to these charges, I want to make clear to the committee that the Oil, Chemical and Atomic Workers are not opposed to the concept of monies for worker training. The American workforce needs constant skills upgrading, and the whole U.S. economy benefits from safer, more productive workplaces. As Connie Malloy will briefly explain, OCAW actually commandeered the JTPA Title III dislocated worker assistance program for our members in Elkhart, administering $1 million in assistance. The program was clean and effective, and won high commendations from the State of Indiana's Department of Employment and Training Services.

I also want to emphasize that OCAW is not opposed to the development of jobs in Puerto Rico. We continue to support the creation of new jobs for Puerto Rico. But we oppose the destruction of existing mainland jobs for the tax-loophole enrichment of U.S. multinational corporations.

In 1988 and 1989, American Home Products brought on-line its new Whitehall Laboratories plant in Guayama, Puerto Rico, to manufacture all the same products our members made in Elkhart: many forms of Anacin, Denorex, Advil, and Dristan. According to records we have obtained from the ADT in Puerto Rico, from 1988 through 1990, American Home products trained 78 new employees with $216,938 worth of JTPA Title II funds. (The company originally sought almost twice as much.)

We question the veracity of these applications, specifically on question 14, where the company repeatedly certified that the JTPA jobs were not being shifted from another labor market. We have found no evidence that the ADT ever made any effort to verify the truthfulness of these certifications. That is shocking, given the fact that all of these products were high-profile, long-established brand names -- Anacin, Dristan, Advil, Denorex -- that were obviously not appearing out of thin air.

I caution the committee that American Home Products is trying to maintain that it never intended to close the Elkhart plant in 1988 or 1989 when it filed its JTPA applications. Recently, the company has also tried to claim that it only moved eight percent of Elkhart's

production to Guayama. We can prove these assertions are false. American Home Products knew that the Puerto Rico production would result in the relocation of jobs from Elkhart and elsewhere on the mainland in the 1988-1990 period when it got the JTPA monies. However, those documents are under seal as a result of a confidentiality order that AHP has insisted upon. If American Home Products is willing to release us, we will certainly supply the documents to the Committee.

Production continued to shift from Elkhart to Guayama all through and after the JTPA training period, and by November, 1991, all 600 of our members were permanently laid off. Obviously, the JTPA-subsidized jobs in Guayama caused substantial harm to our members. To this day, despite the massive evidence we have assembled proving that the Guayama plant took jobs from Elkhart, there has never been even a pro forma investigation by Washington or San Juan.

We next scrutinized the training applications and found the alleged "training curricula" to be completely inconsistent and without basis in fact. We find it absolutely incredible that the curricula are not only internally inconsistent -- but they also bear no resemblance whatsoever to what our members know from 42 years of experience with this company in Elkhart making the identical products.

To put it bluntly, American Home Products violated non-relocation rules and padded the training at a cost of almost a quarter of a million dollars to American taxpayers.

In Elkhart, by union contract, our members had only 28 work-days -- less than six weeks -- to qualify for their job or be dismissed. But according to American Home Products' applications, which have been supplied to the committee, the new machine operators in Puerto Rico suddenly needed 50 weeks -- nine times longer than Elkhart -- to get "trained," at a cost to the taxpayers of $7,120 each. The relatively simple job of shipping and receiving clerk got 26 weeks of "training," costing $3,489 each. Even janitors supposedly got "trained" for 12 weeks, or more than twice as long as allowed in Elkhart.

The training contracts were not even consistent between themselves. Contract 544 said machine operators got trained in 12 weeks, but two other contracts, 223 and 320, said they needed 50 weeks, a variation of more than 300 percent. Another glaring inconsistency was the training schedule for maintenance mechanics. Contract 4288 called for 25 weeks of training for mechanics, but these jobs are much more highly-skilled and complex than machine operators, many of whom were supposedly getting 50 weeks -- or twice as much -- "training."

The only thing the contracts seemed to have in common was their total dollar amount. Three of the four came in right about $40,000 each, and the fourth was for twice that, about $89,000. It looks to us like American Home Products simply adjusted each training contract depending upon the number of workers it was ready to train, claiming a longer or shorter training schedule as needed to use up all the money.

There is no evidence anywhere in the ADT files that this Puerto Rico agency ever investigated these inconsistencies. Indeed, the ADT files show no indication of any meaningful oversight of any kind.

When we showed these training schedules to our leadership in Elkhart, they were outraged. As Connie Malloy will detail, never in 42 years did the company provide anything resembling the training it claimed to have given in Puerto Rico.

We began our investigation of this possible JTPA abuse in late 1990. But in both Washington and San Juan, we ran into stone walls when we sought records of these public funds. On December 12, 1990, we interviewed several persons at the U.S. Department of Labor. We were told told that no records of the contract existed in Washington and that only a small number of individual contracts are randomly checked by Washington. When we retained counsel in San Juan to seek records from the ADT, he was rebuffed and told no records were available. These are public funds, these are our tax dollars, and it took nothing less than a subpoena from the U.S. District Court in San Juan to pry these records loose.

Given what we know about the company's practices in Elkhart, we find it impossible to believe that the training was actually given in Puerto Rico as American Home Products claims. And given the lack of oversight about ADT on all four grants it made to AHP, we have to assume these contracts constitute business as usual in Puerto Rico.

In other words, we believe it is likely that other big plants in Puerto Rico have received JTPA Title II monies under similarly dubious contracts; a year ago, we documented 25 Puerto Rico plants that have absorbed mainland jobs. If JTPA training irregularities are found at other plants, we believe they should be compelled to refund these tax dollars.

To top it all off, as if this Puerto Rico abuse were not bad enough, we thwarted another attempt by American Home Products to abuse JTPA on-the-job training funds in Mason, Michigan in April, 1992. Several weeks after some of our members exercised their transfer rights and began working at American Home Products' Wyeth Laboratories plant in Mason, they were instructed by the personnel department to fill out JTPA on-the-job training application materials, but not to date them, so that the paperwork could be filed to belatedly qualify them as "new-hires" needing "training." Aside from the fact that all of these workers were veteran pharmaceutical production employees with little if any need for new training on the equipment in Mason, the idea that the company would present rigged hiring information so as to qualify for the JTPA monies was too provocative to ignore. Connie Malloy promptly alerted the Indiana Dislocated Worker Unit director, who alerted his counterpart in Michigan, who in turn informed the Ingham County Service Delivery Area about the company's scheme and blocked the application. We applaud both states' employment and training bureaucracies for responding with speed and integrity to our concerns.

I want to conclude by suggesting a wider investigation into JTPA abuses in Puerto Rico and other remedies to deter future frauds.

Last week, our Union testified before the House Ways and Means Committee regarding proposed amendments to IRS Section 936. We entered a report documenting 25 factories that have destroyed mainland jobs to gain the lucrative 936 tax benefits. But if the ADT and the Department of Labor were so lax in overseeing American Home Products, we strongly suspect that some of these other companies also received JTPA on-the-job training grants to subsidize the transfer of work from the mainland. We suggest today that either the DOL Inspector General's Office or the General Accounting Office undertake a thorough review of all JTPA on-the-job training grants made in Puerto Rico to look for non-relocation violations and curricula frauds, with special attention paid to the companies cited in our report.

We would also like to suggest additional remedies to deter other violations of the non-relocation regulation. First, notification: we suggest that at any time a company applies for a JTPA grant which may have any effect at all on an existing collective bargaining unit, the company be required to post notice of the application to that bargaining unit, to allow for comment. Second, disclosure: there must be strict, rapid disclosure requirements for citizens to obtain the JTPA application and contract records so that timely review can be made. Third, deterrence: we propose double or treble payback requirements if a company is found to have abused JTPA monies; otherwise, companies risk nothing by trying to cheat the system. Finally, independent review: as it stands now, the fox is watching the hen-house; our experience with Washington and San Juan makes it clear that without an ombudsman or other impartial fact-finder, it is impossible to monitor such abuses.

Next, I'd like to introduce Connie Malloy, president of OCAW Local 7-515, which represents production and maintenance workers in Elkhart.

Mr. LANTOS. Thank you very much, Mr. Wages.
Ms. Malloy.

STATEMENT OF CONNIE MALLOY, FORMER EMPLOYEE, AMERICAN HOME PRODUCTS

Ms. MALLOY. Good morning, Chairman Lantos, and members of the committee. I was an employee at American Home Products for 23 years at the Elkhart, IN facility.

After a thorough review of the JTPA contracts that AHP received to train workers at their Guayama, Puerto Rico, Whitehall Laboratories facility, I have found some very real concerns about the abuse of our Federal tax dollars being used under those contracts.

As Bob said, I am going to explain to you today some of the training that took place in Elkhart. You are assigned to an area and then given catch as catch can pointers mainly from coworkers and sometimes from supervisors on various machines you are assigned to. This was the procedure for virtually every job in the plant except for the skilled trades which had their own in-house training apprenticeship program that lasted up to a period of 2 years.

There were no trainers dedicated to overseeing the new hires for any startup period at all. There was very little orientation, or classroom time, or lectures on overview or policies, nor any testing for comprehension. And we certainly never had any training on our benefits package.

Despite this haphazard situation and even though some of our workers were not high school graduates, very few employees were disqualified during that 28-day probationary period.

American Home Products apparently considered these prevailing training norms in Elkhart adequate to assure quality and productivity, because until the mid-1980's, our plant accounted for over half of American Home Products' over-the-counter analgesics production. Workers in Elkhart were consistently informed by the company that their quality, productivity, and profitability were high.

The training regimens outlined in Guayama contracts are simply implausible and bear no resemblance to the training practices to the same corporation making the same products in Elkhart, IN. The JTPA applications plainly stated that the trainees would be manufacturing Anacin, Anacin 3, Advil, and Dristan.

All of these products were formerly made in their entirety in Elkhart, except for the Advil, which we just packaged. The other product lines produced at the Guayama facility also include Denorex shampoo, Primatene, Dristan, Anacin 3, and Advil. And all of these products were also produced at Elkhart.

In addition, to validate our claim that this work being done in Guayama is merely a relocation from the Elkhart plant, I was on a tour of the Guayama facility on a court-ordered tour of it to inspect what equipment also was located there. In that inspection, I discovered that Guayama has seven production lines, operational, of which in three of those lines the total equipment came from Elkhart plant. Two of the other lines came from the Hammonton, NJ plant which is also a Whitehall facility within American Home Products.

Clearly these facts they indicate this is a matter of relocation not only a substantial part of our work, the product lines, but also the equipment from the Elkhart plant.

The Puerto Rico training contracts call for training periods that are far too long. They are internally inconsistent within the most common job title machine operator. Another job title, janitor, apparently involves personnel that needed little if any training.

All of the jobs called for lengthy training periods of between 3 and 12 months with highly specific allotments of time for dozens of various lessons. Even the shortest of the alleged training periods, 12 weeks, is 114 percent longer than the Elkhart plant's probationary period which this is 480 hours versus 224 hours.

Contrary to the alleged training curriculum given the Guayama employees, Elkhart training machine operators never received specific instruction on such topics as industrial hygiene, which they receive 6 hours; safety and security which they receive 14 hours; structure and function of each Whitehall Laboratories department they receive 13 hours for; personnel policies 13 hours; operating manual for packaging department, 4 hours; house compensation and benefits 12 hours.

Instead of the 14 hours on introduction to the CGMP's—good manufacturing practices—Elkhart employees had three or four meetings on the subject over the 23-year period I was employed there. Nor did we receive any specific instructions on machines as alleged in the Guayama contracts. The New England bottle unscrambler, 20 hours; Lakso model 990 filler, 20 hours—and by the way, the bottle unscrambler and filler are the same button so having independent hours assigned to the two different parts of the same machine is absurd. Bosch thermoformer, 30 hours.

The training hours quoted above are from ADT contract No. 89–202–320 with American Home Products Whitehall Laboratories, Puerto Rico. Every single training contract I reviewed has similarly detailed and implausible training curriculum.

As Bob Wages mentioned in his testimony, our local was instrumental and actively participated in the administration of the JTPA funds allocated to retrain the displaced Elkhart workers. Our union actually received a grant which allowed two peer counselors to work directly with the work force developments services to assure a quality dislocation program and high participation rate within the program. In fact, some of the workers were looking at production jobs that are disappearing in this country.

A number of our workers—I think we had a total of five—are receiving training in LPN work to actually upgrade their skills because there are no similar jobs they can go to in the production worker field.

You have been provided with a copy of our final monitoring of our participation in this program and this report did praise the union's performance and the benefit we provided to the Whitehall dislocated workers and to the WDS. Our Federal Government providing job training partnership moneys for retraining is a necessary program for dislocated workers, but such assistance is no substitute for the loss of our jobs and the investment of the best years of our lives at Whitehall.

Our union did a number of things trying to make sure our JTPA program initiated at Elkhart was successful and was to propose to American Home Products we form a joint labor-management adjustment committee to maximize the training—retraining resources. Instead, the company refused to participate with the union in any way in this. They proceeded to set up their own training which they put dollars into specifically only for salaried workers, not the union workers, and really duplicated what was already available through the JTPA program.

The Indiana Work Force Development Services also tried to convince American Home Products to work together with us, but the company also told them they weren't interested in working with the union to form such a committee. We also did a number of other things to try to convince the company that to shut down the Whitehall plant and relocate the work wasn't in the best interest of the company either.

We were successful in obtaining EDWAA dollars, title III dollars to fund a prefeasibility study to analyze an alternative to the plant shutdown. We did this prior, supposedly, to the company making the decision they were going to absolutely shut down the plant. This company, Industrial Cooperative Association, Inc., a Boston based consulting firm that the State commissioned to do the study, they came in and asked American Home Products to tour the plant and look at the operations, the equipment, so they could make an intelligent—come to an intelligent conclusion as to what the firm could be used for or the alternatives that maybe the company could use the firm for or the possibility of marketing the firm to another outfit.

The company refused to let them on the premises and they refused to participate in the study in any manner whatsoever. The ICA informed me this was the first time that a company had declined completely to participate in a study of this nature during their 13-year history.

We also had commissioned—the union commissioned the Midwest Center for Labor Research to do a social cost study and we presented these figures to the community and the company prior to any decision being announced the plant would be closed. This study showed the shutdown of the Elkhart plant would cost all levels of government $36.7 million. That is when you add up unemployment compensation, food stamps, Federal, State, and local taxes since most people don't have an income. That is the $47,372 per worker for the first 2 years after the shutdown and almost as much as we used to earn in 2 years.

We are certain that this estimate is low because only half of our work force has been able to find other employment to this date and the unemployment rate in Elkhart is even higher than it was when this study was conducted.

Working men and women in America can no longer look to the American dream. Instead, we are faced with the American nightmare. It used to be if you worked hard and the company prospered you prospered. Now you work hard, your company prospers and you lose your job. It is tragically ironic that we as taxpayers have actually financed the destruction of our livelihoods. It is tragically

ironic that we have had to pay taxes only to have this money offered to industry as an incentive to take the rest of our paycheck.

The JTPA program was intended to promote job growth and increase the skills of American displaced workers, not add to displaced workers. Instead, these funds have become corporate welfare to increase the profits of big business at the expense of every working man and woman in this country who pays more than their fair share of taxes already.

AHP has enjoyed a tax savings of over a half billion dollars from their tax-sheltered operations in Puerto Rico. This is because of section 936 of the Tax Code. That is even though these operations employ less than 2 percent of their worldwide work force.

There has been a lot of finger pointing concerning low voter turnout in this country. Those in power wanted everyone to believe it is because the average American doesn't care or is dissatisfied with how the system is working. This is total nonsense. Working men and women are not apathetic and we are certainly not satisfied. There is low voter turnout because we don't feel our opinions count anymore. No one in Congress is looking.

I have been in Congress over this last 2-year struggle a number of times trying to talk about the abuse of section 936 and abuse of JTPA. We made a trip into Washington to the Department of Labor to try to gather information. Did this company receive JTPA moneys? This is supposed to be a matter of public record. We wasted a whole afternoon in the Department of Labor. They said the money goes to the State, we don't monitor it.

We went to Puerto Rico, we visited with the Secretary of Labor there. He claimed he didn't know who gets JTPA funds, that the local PIC's handle that so we got no information again. We filed a request. We got no information. We got the ADT contracts through the filing of that lawsuit through the discovery process, not through the process. It should work that the average citizen could come forward and make a request and get that information. We got it only through the discovery process. The perception is those with the money run this country and that is who controls the government.

I implore this committee to show the working men and women of our great Nation that corporate America is not above the law, we are not a Nation of people being taxed without representation from those who have been selected to run our government.

And I again want to reiterate with Bob that I really appreciate this hearing and Chairman Lantos, for holding this hearing. I feel like someone is finally listening to our pleas because we have had a bill introduced on 936 that is sitting in House Ways and Means and dying because we can't get a hearing. At least we had someone in this committee that cared about the JTPA abuse.

I hope this committee will give consideration to our struggle we have been having.

[The prepared statement of Ms. Malloy follows:]

TESTIMONY OF CONNIE MALLOY, PRESIDENT
OIL, CHEMICAL AND ATOMIC WORKERS UNION, LOCAL 7-515
BEFORE THE HOUSING AND EMPLOYMENT SUBCOMMITTEE
CONCERNING THE MISUSE OF FEDERAL JOB TRAINING FUNDS
JULY 30, 1992

Good morning, Chairman Lantos and members of the committee. I'm Connie Malloy, President of OCAW Local 7-515 located in Elkhart, Indiana. I was employed by American Home Products for 23 years.

After a thorough review of the JTPA contracts that AHP received to train workers at their Guayama, PR, Whitehall Laboratories facility, I have some real concerns about the abuse of our federal tax dollars under the JTPA program.

Training in Elkhart at the AHP Whitehall Laboratories facility at which I was employed 23 years consisted of a new-hire being assigned to an area and being given catch-as-catch-can pointers mainly from co-workers and sometimes from supervisors on various machines as he or she was assigned to them. This was the procedure for virtually every job in the plant except for the skilled trades, which had their own in-house apprenticeship program lasting up to two years. There were no "trainers" dedicated to overseeing the new hires for any start-up period. There was very little orientation, or classroom time, or lectures on overview or policies, nor any testing for comprehension. Despite this haphazard situation and although many Elkhart workers had less than a high school education, almost no employees were disqualified during their 28-day probationary period.

American Home Products apparently considered these prevailing training norms in Elkhart to be adequate to assure quality and productivity; until the mid-1980s, the plant accounted for roughly half of AHP's over-the-counter analgesics production. Workers in Elkhart were consistently informed by the company that their quality, productivity and profitability were high.

The training regimens outlined in the Guayama contracts are simply implausible, and bear no resemblance to the training practices of the same corporation making the same products while in Elkhart, Indiana. The JTPA applications plainly stated that the trainees would be "Manufacturing Anacin, Anacin 3, Advil, Dristan." All of these products were formerly made in their entirety in Elkhart, except for Advil, which was packaged but not bulk-produced in Elkhart. The current product lines produced at the Guayama facility include Denorex shampoo, Primatene, Dristan, Anacin 3, and Advil. All of these products used to be produced at Elkhart.

The Puerto Rico training contracts call for training periods that are far too long; they are internally inconsistent within the most common job title (machine operator). Another job title (janitor) apparently involves personnel that needed little if any training. All of the jobs called for lengthy training periods of between 3 and 12 months, with highly-specific allotments of time for dozens of various lessons. Even the shortest of the alleged training periods--12 weeks--is 114 percent longer than the Elkhart plant's probationary period (480 hours vs. 224 hours).

Contrary to the alleged training curricula given the Guayama employees, Elkhart packaging machine operators never received specific instruction on such general topics as: "industrial hygiene" (6 hours); "safety and security" (14 hours); "structure and function of each Whitehall Laboratories department" (13 hours); "personnel policies" (13 hours); "operating manual for packaging department" (4 hours); "compensation and benefits" (12 hours). Instead of 14 hours on "introduction to CGMP's (good manufacturing practices), Elkhart employees had perhaps 3 or 4 meetings on the subject over 20 years. Nor did we receive instructions on specific machines as alleged in the Guayama contracts: "New England bottle unscrambler" (20 hours); "Lakso model 990 filler" (20 hours); "Jones CMC 200 cartons" (20 hours); "Bosch thermoformer" (30 hours). The training hours quoted above are from ADT contract #89-202-320 with AHP's Whitehall Laboratories PR. Every single training contract I reviewed has similarly detailed and implausible training curricula.

As Bob Wages mentioned in his testimony, our Local was instrumental and actively participated in the administration of the JTPA funds allocated to retrain the displaced Elkhart workers. Our Union received a grant which allowed for two peer counselors to work directly with the Workforce Development Services to insure a quality dislocated worker program and high participation rate within the program. You have been provided with a copy of the final monitoring of our participation in the program. This report praised our performance and the benefit which we provided to the Whitehall dislocated workers and to WDS. Our Federal Government providing JTPA monies for retraining is a necessary program for dislocated workers. But such assistance is no substitute for the loss of our jobs

and the investment of the best years of our lives at Whitehall.

Our Local Union proposed to American Home Products that we form a joint labor/management adjustment committee to maximize the retraining resources. But the company refused to participate. The Indiana Workforce Development Services also tried to convince American Home Products to work together with us but the company also snubbed the state's appeals.

Our union was also successful in obtaining EDWAA (Title III) dollars to fund a pre-feasibility study to analyze alternatives to the plant shutdown. American Home Products refused to cooperate with the Industrial Cooperative Association, Inc., a Boston-based consulting firm that the state of Indiana commissioned to do the study. The decision by American Home Products to not cooperate with ICA seriously affected the consultants' ability to maximize the results of the study. The ICA informed me that this was the first time that a company had declined completely to participate in a study of this nature during the thirteen year history of the ICA.

Working men and women in America can no longer look to the American Dream. Instead, we're faced with the American nightmare. It used to be if you worked hard and the company prospered, you prospered. Now, you work hard, the company prospers and you lose your job. It's tragically ironic that we as taxpayers have actually financed the destruction of our livelihoods. It is tragically ironic that we have had to pay taxes only to

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have this money offered to industry as an incentive to take the rest of our paycheck. The JTPA program was intended to promote job growth and increase the skills of American displaced workers. Instead, these funds have become used for corporate welfare to increase the profits of big business at the expense of every working man and woman in this country who pays more than their fair share of taxes.

AHP has enjoyed a tax savings of over half a billion dollars from their tax-sheltered operations in Puerto Rico, even though those operations employ less than 2% of their worldwide workforce.

There has been a lot of finger pointing concerning low voter turn out in this country. Those in power want everyone to believe it's because the average American doesn't care or is satisfied with the system. That is total nonsense. Working men and women are not apathetic or satisfied, but we feel our opinions don't count, and that no one in Congress is listening. Those with the money run this country and that's who controls the government. I implore this committee to show the working men and women of our great nation that Corporate America is not above the law, and that we are not a nation of people that are being taxed without representation from those who have been selected to run our government.

Thank you for your time and consideration. I hope that this committee will give purpose to our struggle for justice.

Mr. LANTOS. Thank you very much, Ms. Malloy. We will do our best.

We would like to hear from Ms. Bernice Gilbert.

STATEMENT OF BERNICE GILBERT, FORMER EMPLOYEE, AMERICAN HOME PRODUCTS

Ms. GILBERT. I am Bernice Gilbert and I worked at American Home Products' Whitehall Laboratories plant for 24 years.

Speaking for the members in Elkhart, I want to second everything Bob Wages and Connie Malloy have just said about the training schedules from Puerto Rico.

This hit us three ways: First, we learn that Tax Code 936 was the cause of our plant closing, and that American Home Products is dodging $106 million in taxes every year by running away to Puerto Rico.

Second, we have to pay income taxes on our measly unemployment checks. I only get $116 a week, before taxes.

And, third, we learn that American Home Products actually got JTPA training grants to pay half the wages of its new Puerto Rico workers. To us, this whole thing is just plain unjust.

On October 1, 1990, I was working in our union office when the phone rang. It was a radio reporter. He told me they had just received a press release from American Home Products announcing our Whitehall plant in Elkhart would close. The reporter asked me for a comment. I was speechless.

I flashed back to that day in 1963 in my high school sewing class when the news arrived that President Kennedy was shot. I was just stunned. At the same time I couldn't believe it was true, I knew it was. I couldn't respond, and I asked the reporter to please call back.

Since that day, and since the shutdown was completed last fall, my life and the lives of our members in Elkhart have been miserable. Despite the very good assistance program our local has run for our members, most of us are still having very hard times.

I personally have suffered severe depression and heartache and great family hardships. Two years before I was terminated, my husband had lost his job and took a big pay cut when he finally found work—with no health insurance. As a direct result of the tension and anxiety caused by my layoff from American Home Products, my husband and I have separated, after 16 years of marriage.

My three sons are grown, but I am left as the primary caretaker of both my parents. My father has had lung cancer operations on both lungs. My mother has survived breast cancer, but 2 weeks ago, she had to have surgery for bladder cancer. She is without health insurance of any kind until October. At that time, Medicare starts.

After September, I myself will be without health insurance, and I cannot imagine what would happen if I became seriously ill. Our family savings have shrunk to almost nothing. I am 44 and the job market in Elkhart is awful, especially for women and people my age and older.

Instead of being in our prime earning years, looking forward to a secure retirement, my husband and I are split apart. He is now

suffering a sharply lower standard of living, and I am dependent upon unemployment compensation. Both of us are just one more calamity away from complete ruin; I can only see near poverty for the rest of my life.

This is the reward I get for giving American Home Products the best years of my life. This is what Elkhart gets for having a plant that was always profitable, always efficient, always willing to work three shifts a day, 7 days a week during flu epidemics, the Tylenol scares and other rush times.

My father was thrown out of work twice in his life, and he has tried to help me through the loneliness and the worthlessness I often feel. But some days, I just cannot deal with it, and it is very hard being around my family at all.

I will never forget the first time after the plant closed and I was asked in a place of business where I was employed. I almost replied Whitehall Laboratories, but I caught myself and answered I am unemployed. I felt so embarrassed. After I was back home, I felt such a feeling of devastation and panic. What was I going to do? I have not been unemployed in 24 years. I was 19 years old when I started at Whitehall and I am 44 now. I have not worked anyplace else.

I go to the union office to volunteer some days and see my fellow union members. The shutdown has had an awful effect on everyone. The monetary losses are terrible. Very few people are back to work and those who are working—have taken pay cuts averaging 50 percent, plus no health insurance. Many people have had their cars repossessed or defaulted on their mortgages and lost their life savings in their home. Some folks have gone back to school to try to wait out the recession.

But it is the psychological pain that never goes away. When you can no longer provide for your family, you feel worthless. When you are home and idle all the time, there are tensions with your family just like with me and my husband. We have had many couples separate or divorce and several suicide attempts. Two of our members, Jess Hamlin and Ted Fields, died before age 50 and they were in fine health before the shutdown.

Fifty-six percent of our members are women, and two-thirds are the providers of their families' health insurance. Most of us had more than 20 years seniority; we had very low turnover. We never went on strike in the 42 years of our union. For all our loyalty, American Home Products corporation put us on the street.

To be honest with you, I am afraid to look for a job now. I am scared to commit myself to another company for fear they will do what American Home Products did to me. When you go through what I have been through, you can never trust a company again; I will be mistrustful of any employer for the rest of my life. I am afraid to go back to school because it has been so long. I might fail and that would be an embarrassment. And besides, I know the job market is terrible no matter how old or how educated you are.

Our main hope for dignity and self-esteem is through these actions we have taken against American Home Products. We look to this committee and to the courts for justice.

On behalf of all the members of local 7–515, I ask you to hear our plea and right this wrong. For many of our members, hope of justice has been the only thing that has enabled them to survive the pain of losing their jobs and the hell of unemployment. Thank you.

[The prepared statement of Ms. Gilbert follows:]

TESTIMONY OF BERNICE GILBERT, CHIEF STEWARD
OIL, CHEMICAL AND ATOMIC WORKERS UNION LOCAL 7-515
BEFORE THE HOUSING AND EMPLOYMENT SUBCOMMITTEE
CONCERNING THE MISUSE OF FEDERAL JOB TRAINING FUNDS
JULY 30, 1992

Good morning, Chairman Lantos and members of the committee.

I'm Bernice Gilbert and I worked at American Home Products' Whitehall Laboratories plant in Elkhart for 24 years. Speaking for the members in Elkhart, I just want to second everything Bob Wages and Connie Malloy have just said about the training schedules from Puerto Rico.

This hits us three ways. First, we learn that Tax Code 936 was the cause of our plant closing, and that American Home Products is dodging $106 million in taxes every year by running away to Puerto Rico. Second, we have to pay income taxes on our measly unemployment checks. I only get $116 a week, before taxes. And third, we learn that American Home Products actually got JTPA training grants to pay half the wages of its new Puerto Rico workers. To us, this whole thing is just plain unjust.

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Since that day, and since the shutdown was completed last fall, my life and the lives of our members in Elkhart have been miserable. Despite the very good assistance program our local has run for our members, most of us are still having very hard times.

I personally have suffered severe depression and heartache and great family hardships. Two years before I was terminated, my husband had lost his job and took a big pay cut when he finally found work again -- with no health insurance. As a direct result of the tension and anxiety caused by my layoff from American Home Products, my husband and I have separated, after sixteen years of marriage.

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My father was thrown out of work twice in his life, and he has tried to help me through the loneliness and the worthlessness I often feel. But some days I just cannot deal with it, and it is very hard being around my family at all.

I will never forget the first time I was asked where I worked, at another place of employment. I almost said "Whitehall Laboratories," but I stopped myself and said: "I'm unemployed." How ashamed and embarrassed I felt. When I went home, I wondered what I could do. I have not been unemployed for 24 years. I was 19 when I started at Whitehall, and now I am 44; I never worked anyplace else.

I go to the Union office to volunteer some days, and see my fellow union members. The shutdown has had an awful effect on everyone. The monetary losses are terrible; very few

people are back to work, and those who are working have taken pay cuts averaging 50 percent, plus no health insurance. Many people have had their cars repossessed or defaulted on their mortgages and lost their life savings in their home. Some folks have gone back to school to try to wait out the recession.

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Thank you.

Mr. LANTOS. Thank you very much Ms. Gilbert. We hear you loud and clear.

Let me begin with you, Mr. Wages. JTPA, the Job Training Partnership Act, is considered the principal legislative achievement of Vice President Dan Quayle when he served in the Senate. It seems to me ironic that here we have the use of job training partnership funds taking jobs away from Indiana. What is your comment?

Mr. WAGES. I find it ironic as well, but I would say this: I am not a huge fan of the Vice President, but I don't believe he intended this kind of conduct when he and Senator Kennedy put together this legislation. I think their intention was to provide a pool of resources for training people who needed to be trained, to expand the competence of the American work force.

The trouble is, the best of intentions, when used by people consumed with greed, can often take whatever the intention of the legislation was and move it to their own device and I think that is what has happened. So I certainly don't believe that the Vice President ever intended when he was in the Senate to have this kind of result, particularly not for 800 people in Elkhart, IN.

Mr. LANTOS. You note in your statement the JTPA funds included training times that were inconsistent and never executed as stated. Can you give us some specific examples of training that never took place?

Mr. WAGES. I don't have the contracts in front of me, Mr. Chairman, but there are specific situations where—and I might let Mr. LeRoy help me with this. Greg, if you would like to take over specific situations referred to in my testimony supported by some of the contracts upon which those allegations are made. If Greg would help me out.

Mr. LANTOS. Mr. LeRoy.

Mr. LEROY. Sure. If the chairman can refer to the two contracts 89–202–544 and 89–202–320, both of them provide for training machine operators which was the most common job classification trained at the plant. However, one contract called for 480 hours of training, the other one called for 2,000, a variation of more than 300 percent.

If you compare the four-page listing of specific training activities that allegedly occurred for those two groups of workers, you find enormous disparities in the amount of hours allocated to the exactly identical training elements.

The variation in the number of hours posed for these training activities ranges anywhere from 2 to 7. There are enormous disparities. They include things like Connie spoke about. Blending equipment, for instance, the V Blender as an example: One contract says 10 hours of training, the other says 40.

Mr. LANTOS. Were these periods of training actually executed? To what extent were these merely figures on a piece of paper?

Mr. LEROY. We have found nothing that makes us believe that they were executed. They look completely highly implausible to us. Connie can speak to the arrangements she found in the plants.

Mr. LANTOS. Ms. Malloy, would you like to take that?

Ms. MALLOY. During the plant inspection, there was no training room, per se, that I found at all and I went all through the plant. They presented one area in the middle of the production floor

where a line had been and the area that was enclosed was where the filler of that line had been.

And that line, from the filing of our lawsuit, had been rerouted back to Hammonton, so that line was taken out. When we saw that empty spot in the middle of the production floor, they said that is the training room. When we looked in, it had all the hookings where the line was run up. It would be implausible to me they would run training right in the middle of the production area.

Mr. LANTOS. You are suggesting some of this was pure fiction?

Ms. MALLOY. Absolutely. In my opinion, I think it was. I am familiar with all those different jobs and the operations. Like I said, we had 28 days to train for any of those jobs and there was no formal trainer. And these aren't highly skilled. They are average production jobs. They are not highly skilled type of work. So I can't imagine.

Mr. LANTOS. Is it reasonable to assume that sums were allocated and then a training program was invented to match the sums allocated?

Ms. MALLOY. From reading the documents, that would be what my conclusion would be is exactly what they did. They just matched up the amounts of hours to match up with the amount of money that was available to them.

Mr. WAGES. Mr. Chairman, that is basically the conclusion we came to from our own examination of production lines.

Mr. LANTOS. That would be pure and unadulterated fraud.

Mr. WAGES. That is my definition.

Mr. LANTOS. The oversight responsibility, Mr. Wages, for these contracts rested with the Puerto Rico's labor agency. We have been told by that agency that a monitor was at the facility once a month. Did your investigation indicate what kind of oversight Puerto Rico provided?

Mr. WAGES. We believe that while there may well have been someone at the facility once a month, we would suggest that that person was having coffee, they weren't investigating what was happening in the plant. We think that is the problem. We believe that there was no analysis of what went on inside that facility to compare what they submitted for training, what actual training occurred and compare that to what they should have known.

As I mentioned in my statement, to the obvious well-known products that were being produced in Guayama, Puerto Rico, that formerly had been produced in Elkhart, IN I think, a cursory inspection would have tipped somebody off on that particular issue. We believe if a person was there, they weren't doing their job.

Mr. LANTOS. Some of the trainees were required to have a Bachelor of Science Degree and a chemist's license. Does that appear to be targeting training moneys to those most in need?

Mr. WAGES. No.

Mr. LANTOS. We learned of the U.S. Department of Labor's lackadaisical attitude toward this program when we asked for a copy of the contracts between American Home Products and the Commonwealth of Puerto Rico. We received a letter from the Department of Labor dated July 7, 1992, which simply said "Dear Congressman, we don't have them."

What sort of oversight do you think would be needed to look at these questionable contracts from training times to the question of eligibility of participants?

Mr. WAGES. I think it requires—first of all, there has to be some balance. I don't think you can have simple oversight without an open process. I think having an open process facilitates oversight. What I am suggesting by saying that is that you need all of those elements I mentioned when we were talking about the remedies that we think are important here. You need notice. You need input. You need involvement. You need the ability of unions and workers to raise questions in some kind of a public process.

I believe there ought to be processes subject to the Administrative Procedure Act where a record can be made, where findings of fact have to be made if there are challenges made where there is some reasonable belief that you can get some justice and, if the conduct is too egregious, some court review.

In terms of administrative overview, I would liken it to something that happens in the field of occupational safety and health. While I am not a big fan of what OSHA has done with occupational safety and health in the last several years, there has to be a procedure where there is hands-on analysis of what is happening in this facility. You ought not to give a quarter of a million dollars to a company to train without some hands-on analysis and inquiry as to whether or not that training is being done.

Federal grant programs and other such programs operated by other agencies in the Federal Government require audits, require spot inspections by people and peer reviews are often involved in those things—I am talking about Federal grants for the most part.

There are existing procedures that are out there that everyone is comfortable with that require not only oversight but, like I said before, I think it has to be a lot more than just oversight by administrative agencies. I think you have to have a process that is open, subject to challenge, subject to findings of fact, subject to review.

Mr. LANTOS. Ms. Gilbert, what is your opinion of using taxes paid from your own unemployment check to subsidize the wages of workers in another State who took away your job?

Ms. GILBERT. Well, it makes me angry to think that they would take what little bit I get and tax it and then misuse it.

Mr. LANTOS. I couldn't agree with you more.

Mr. Machtley.

Mr. MACHTLEY. Thank you very much.

Mr. Chairman, obviously as everyone listens to your testimony about the devastation and impact of closing the facility, everyone is very much moved by the personal hardships which you and other workers are experiencing.

In order to put this in perspective, I think it is important to go back and review some of the facts so I have it clear. And because this is testimony of the Job Training Partnership Act as opposed to a hearing on your specific case, I would like to make sure this is clear.

It is my understanding that the Elkhart, IN facility was shut down approximately in April 1990; that you were first notified—the first notification went out in April 1990 that Elkhart would be phased out; and that as a result of this, that there were studies

done through October 1, 1990; a final decision was made in November 1990 that the Elkhart facility would be closed; and that the workers would be—the work would be consolidated into three facilities: One in Hammonton, NJ; one in Richmond, VA; and one in this Puerto Rican facility. Is that correct?

Mr. WAGES. No.

Mr. MACHTLEY. Can you share what is not correct?

Mr. WAGES. Well, the first thing that is incorrect is when the closure was announced. The second thing that is incorrect is that prior to——

Mr. MACHTLEY. When was the closure announced?

Mr. WAGES. The closure came down in the fall of 1990, not in April 1990. We executed a collective bargaining agreement in May 1990 and it was a 4-year contract, so there wasn't an announcement at that time that there was going to be a closure.

Mr. MACHTLEY. Sometime in 1990 the facility was closed in the fall?

Mr. WAGES. In the fall it was announced. The facility didn't totally close until November of last year.

Mr. MACHTLEY. OK. Now what about the consolidation between those three facilities?

Mr. WAGES. It is true that the company would have everyone believe that is what happened. What in reality happened was production at Elkhart had been slowly and systematically moved to the Guayama, Puerto Rico facility. When we challenged that after the announcement of the closure, the company did bring back production lines to Hammonton and make it look good.

The reality is that the company had systematically moved production to Guayama, Puerto Rico, had asked these people in Elkhart to package it up and ship it down there in terms of the actual production lines, the equipment.

Mr. MACHTLEY. We will have some testimony a little later from someone from Department of Labor who suggested about 8 percent of the work force work was going to Puerto Rico and the other was going to these other two facilities. I can't argue because I have no facts.

Mr. WAGES. I don't know that Department of Labor says that. I know the company has been saying that for the last couple of years.

Mr. MACHTLEY. That is not the critical issue. I want to go on and ask a couple other questions.

Ms. MALLOY. I have one comment I would like to make in reference to your comments. Work left our plants as early as 1988. When the Puerto Rican facility first came on line, a production line was packed up and left our plant. It was a major production line running three shifts and 7 days a week. Work and product line left immediately. This was prior to any idea the plant was going to close.

They told us new work was going to come in to replace the work we were losing, but that never happened. The company made earlier statements before the 8 percent came out and we have documents to show that that early on, when we first brought up the issue, that 40 percent of the work was going to Guayama. As our

struggle escalated, it went to 8 and later statements our company made it went to zero. So they were very inconsistent.

Mr. MACHTLEY. The thrust of your testimony I heard from Mr. Wages was that he objects to losing jobs to offshore facilities through the use of job training partnership funds. I think that may be a very legitimate objection.

Now, do you also object to losing jobs in one facility in a State facility; and did you go to Hammonton, NJ; and did you determine whether they used job training partnership funds for the facility in Richmond?

Mr. WAGES. It is my impression we investigated all the facilities.

Mr. MACHTLEY. Do you know, yes or no?

Mr. WAGES. I don't know personally.

Ms. MALLOY. We did not receive any contracts.

Mr. WAGES. We didn't get any contracts.

Ms. MALLOY. That they did receive any job training moneys at Hammonton or Virginia.

Mr. WAGES. We don't know. We did inquire, we don't know. Does that answer your question?

Mr. MACHTLEY. Is it your testimony that that would be equally as wrong?

Mr. WAGES. Yes, absolutely.

Mr. MACHTLEY. As I have been trying to follow this Job Training Partnership Act, as I understand there is a provision under section 141(c) which clearly states that no funds may be used to assist in relocation of establishments or parts thereof from one area or another unless unemployment in the area of original location or in any other area—it seems to me that that ought to be able to protect your situation, be it either an offshore or another State relocation.

Is your testimony that that is either not being enforced or that that is insufficient? Because I got the impression from your testimony we ought to have something in the law to prohibit what you are alleging has occurred. Now, I am not an expert on this, but as I read this, that prohibits what you are just talking about.

Is your testimony this is not strong enough or it is not being enforced?

Mr. WAGES. I think my testimony, with all due respect, was we have a law—I mean the point I was making is that this is illegal and why is it permitted to go on?

The point I am making is that provision doesn't necessarily need to be amended or strengthened but there has to be enforcement mechanisms and a process which would permit us to enforce that provision of the law. That I think, in all fairness, was the guts of what I was trying to convey to the committee.

Mr. MACHTLEY. Is your view we are not enforcing what is the existing law as opposed to having it strengthened?

Mr. WAGES. With respect to that provision, yes.

Mr. MACHTLEY. There were, as I understand the facts, about $516,000 made available under the job training part, Job Training Partnership Act, for displaced workers in the Elkhart, IN area.

Bernice, were you able to take advantage of these moneys?

Ms. GILBERT. No, I wasn't.

Mr. MACHTLEY. If not, why not?

Ms. GILBERT. Well, the reason I haven't is because I was the chief steward or am the chief steward of the local and also I took the office of financial secretary because that officer resigned. And I have been busy going into the office and, you know, meeting with the other union members and helping them.

And, also, with the problems I have had with my mom and dad and I just haven't been able to take advantage. Plus, I guess one of the real problems was the motivation to make myself go for fear of it not doing any good because one of the things we are hearing from the other members is they have gone through this program and they have gotten retraining, but if the jobs aren't out there or if the jobs are only paying minimum wage, the retraining is not going to do any good.

Mr. MACHTLEY. So you don't feel that this $516,000 is a good assistance program to your community for displaced workers?

Ms. GILBERT. I think it does a lot of good but, you know, our situation in Elkhart, it has got one pharmaceutical plant besides Whitehall and so, you know, our skills aren't needed. They are not hiring at that plant. And then it is RV-oriented. That is very fast paced and most of the jobs you have to be—nearly all of the jobs you have to be skilled. They ask for experience and we aren't qualified.

Then the retraining, I don't know what to say.

Mr. MACHTLEY. Well, the purpose of the money is to retrain people with different skills to make them—part of this hearing is to try and figure out not only why did your facility close and were they illegally using dollars to displace workers from your facility, but are the dollars that we are providing for your community for displaced workers working.

Connie Malloy, have you had the opportunity to utilize any of this $516,000?

Ms. MALLOY. Yes, I did. I completed a bachelor's degree under it. I only had one semester to go and there are a number of people—I was the direct supervisor over the peer counselors involved in the program—I mentioned that we do have—I know of five people that are in the LPN program. It has been very beneficial.

We did have, I think, approximately 300 out of the 500 members who had access the program. They learned how to write resumes. It helped with the job search. Some of those skills—all of that training was provided. There are a number that are still in school that haven't completed their training regimen, so we won't really see the results of them being able to get placed into jobs until the program is finished and it is not finished yet.

Actually there was up to $1 million that had been made available to the work force there. It is a shame that money had to be made available, because in my opinion the plant should have never closed. It did and there is the use of those Federal dollars so we had to use the retraining money to retrain a work force where the retraining moneys are being used to retrain another work force to do the job that we did.

The job training partnership training program, I think, is a good program. I think it is needed because workers like ourselves that come out of a plant with basically low skills, you are going to have

to have training to go into the job market unless you stay at the service sector and work for $5 an hour.

Mr. MACHTLEY. How do we help people like Bernice who feel intimidated perhaps or threatened and don't seem to be able to access? Here is a program of up to $1 million. I am very sorry that this has occurred, but at least there is a million-dollar program.

How do we make it better so people like Bernice can access? How do we do a better job?

Ms. MALLOY. One thing that did help us to have higher participation—because this is an older work force, people that haven't been to school for 30 years, it is very difficult to get them to go back in because the whole training program is set up—they had to take tests to enter the program. You had to take a skills assessment test.

People were afraid of those tests. I think that has kept a number of people from going in. They were afraid of going in and told they didn't qualify. We did have that happen. We had a number of people who didn't have the skills that they could go take classes at the university or the Ivy Tech. It doesn't pay—the program doesn't pay for classes to prepare you to take classes. You had to go on on your own then and prepare and pay your own way to take those kind of classes.

There are some problems—there is a lot of red tape and bureaucracy with the program. A lot of people were inhibited by that. By having the union counselors, we tried to make people as comfortable—we tried to make them know what all was going to be required of them before they got there so they would have all the paperwork ready, come in a plan.

That is difficult for people to do that have just been unemployed because there is a lot of anger, hurt, and bitterness. Most of these people have never drawn unemployment so they are distrustful of government programs.

I think that is why people like Bernice, because of their own personal situation, couldn't make that adjustment to go in and try it. We are still working on her and we are hoping she will access it yet. We are hoping the others that haven't gone in will go in.

Mr. MACHTLEY. Are there government counselors that came onsite immediately after the closing?

Ms. MALLOY. We had a real problem with this, too. Because of it being a phaseout, the company had started layoffs as early as February 1990. They would not admit the plant was closing until November 1990. We had four major layoffs take place. Those people were laid off longer than the 6-month period. They fell out of the system. They weren't eligible.

We had to go to the State and make a plea and get an exception. The State certified the workers without the company announcing the plant was closing. The union went there and convinced them we know this plant is closing. We have workers out of unemployment, can't access a training program because they haven't been certified as dislocated.

The company was telling the government officials they are on a 4-year recall. They put up a lot of obstacles so we lost a lot of people that were out of work almost 1 year before we even had a pro-

gram in place. There were problems because the local PIC's merged. There were a lot of problems.

One group started it and they left and it merged—two councils merged so a whole new team came in, set up a whole new program. The company was trying to run their own separate program with management people and excluding the union people. They were making statements, too, that the government program wasn't worthwhile.

A whole campaign took place in the plant and it was very hard to go back in and convince people this was worthwhile and to get involved.

Mr. MACHTLEY. Thank you very much. I do very much appreciate your testimony and coming here today. I look forward to the testimony of the Assistant Secretary of Labor to determine how they are enforcing this provision, whether it be Puerto Rico or Indiana or Virginia or any other State which is using job training partnership funds in a time of decreasing employment.

Mr. LANTOS. Thank you very much.

Congressman Luken.

Mr. LUKEN. Thank you, Mr. Chairman. I will just take a moment. First of all, I want to congratulate you on again taking so seriously the oversight role of this committee and demonstrating once again your consistent commitment to fairness for the American worker.

I think it is the history of this committee that Chairman Lantos puts faces on statistics for us. We not only read about what happens to people, we get to hear their stories that are often very tragic as are the stories that you have told this morning.

When I reviewed the testimony this morning, I was somewhat shocked at the prospect that American tax dollars would be subsidizing the relocation of the workers in a situation like this. I think every community including my own has experienced shutdowns, has seen the tragedy that that occasions for families—working families and I appreciate your very sincere and honest testimony in that regard.

I think what we are hearing today is not only a story about the problems with the JTPA, but we are also hearing just that, that when plants close, people are out of work, families suffer in ways that are difficult to measure, difficult to measure, and difficult to define.

When I was coming in, Mr. Wages, you were beginning—and I think maybe it was just a stream of consciousness—but you were beginning to talk about what you think penalties should be for people who engage in this kind of activity. Obviously, one problem we have is that it is a government agency that apparently is not enforcing a law that already seems to exist.

On the other hand, the testimony to follow by the inspector general, some of the things that you have said, indicate that people engage in what might be considered a pattern of fraud and abuse around the JTPA. And you have obviously been involved in this for a while.

And I know you can't legislate or prescribe with great certainty what should happen to people, absent—if we take electrocution and

capital punishment off the table, what kinds of things would you suggest? What kind of penalties would you suggest?

How can we make a sanction that deters the conduct in the future, I guess is the question?

Mr. WAGES. I think if you accept the proposition that we are dealing here within stances that at least in the situation we are dealing with, when there is a fairly obvious demonstration that they are using JTPA money in a manner inconsistent with the statute, you have nothing less than fraud.

I think Chairman Lantos hit the nail squarely on the head. So I think in particularly outrageous situations where there is a flowing, willful pattern of conduct to obtain money and to use it in a manner inconsistent with the statute, that you ought to impose criminal sanctions.

You know, it is time that—corporate executives are business people who break the law and steal tax money, too some times. I would. If I would do it, I guarantee you it is going to happen. I think there should be a penalty. I think it is an unfortunate state of affairs when you say you have got to have criminal sanctions, but I think that is what has to be there.

But before you even get to that point, I guess one of our real concerns is: How do we go about setting up a process to insure that we can enforce the law? Our experience with the Department of Labor and with the State agencies that are involved here, certainly with local PIC's, is they all think it is a closed society for some reason or another. It is Federal money, we ought to have access to the information. You can't pry it out of them with a crowbar.

When I go to a public institution and they are using tax money to do something and I can't get the information, I got to tell you, cynic that I am, I think something is going on. Maybe that isn't true most of the time but that is my first reaction.

Mr. LUKEN. We are going to hear I think, Mr. Chairman, from the company next week, but I just would ask, I spent 4 years of my life in South Bend, but I don't know the situation at this facility. Was it a particularly contentious—this is not related to JTPA and probably is irrelevant for purposes of this hearing—was it a contentious situation for a long time between labor and management?

Mr. WAGES. The answer to that is no. These people, OCAW and that local union, represented the workers there for 40 some years or thereabouts. They never had a strike. There is not 1 lost day of production due to a labor dispute. I think this company will tell you—they are always telling me what great labor relations they have. I think the issue here was they decided to close the plant, take the work away, do the work elsewhere.

Mr. LUKEN. You believe it was primarily to find cheaper wages, cheaper benefits to make the same product. You don't believe that?

Mr. WAGES. Not entirely. What happened was we believe they intentionally calculated going to Puerto Rico with very lucrative tax incentives under the Puerto Rican Commonwealth law, perfectly lawful to do that—many companies do it—decided then that they should move the production there and, by becoming a section 936 corporation, bring their income back to the United States with no Federal income tax.

I got to tell you, if I am a corporate executive and I make that decision, the shareholders are going to give me five gold stars. The problem here is you also throw 400 or 500, 600 people out in the street in the process.

Part of the Puerto Rican statute, much like JTPA, says: Question, are you going to displace mainland jobs? Well, the company said, No, we wouldn't. Our suggestion in this whole dispute is they did and they were going to. They knew they were going to. That is when the contention between these folks and this company and this union began.

Mr. LUKEN. And the point is that if people are going to move jobs around legally, they can do that, but neither the tax law nor the JTPA should have a hand in subsidizing that activity and putting 500 to 600 people out of work and I think that is understood, and thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much. I want to thank all of you. You have done a real public service and this committee is determined to pursue this matter vigorously. I thank my friend—Congressman Machtley has another question.

Mr. MACHTLEY. I just had one followup based on Mr. Luken's that came to mind.

Did the company, Bernice and Connie, offer you other jobs in Richmond or Hammonton and was that a companywide policy? In other words, did they try and do anything to help?

Ms. MALLOY. It took a considerable length of time. We have a number of board charges filed because in our contract we did have transfer rights, but, in fact, no transfers were offered until the board came out with a ruling. Then transfers were finally offered in October 1991 just prior to the close of it. Most of the work force had been out on the street quite a long time before that. You know, postings were up and people can apply for them. We have had approximately 47 people who——

Mr. MACHTLEY. Did they offer you a job, and Bernice, did they offer you a job?

Ms. MALLOY. No.

Ms. GILBERT. No.

Ms. MALLOY. They didn't really offer anybody a job. They would say we have so many openings at this facility you can apply for. They would give us first consideration. There was no automatic transfer.

Mr. LANTOS. The only comments about the transfer rights is that the transfer rights become much less valuable in a society where there are two wage-earner families, and I think it is self-evident that at a time when there was a single wage earner, that a transfer right was significant. With two wage-earners, it merely presents a problem even if it is implemented.

I want to thank all three of you and this subcommittee will stay on this issue until hopefully it will be resolved in a satisfactory conclusion.

Mr. WAGES. Thank you, Mr. Chairman.

Mr. LANTOS. Our next panel consists of Mr. Julian De La Rosa, inspector general of the Department of Labor, Mr. Clarence Crawford, Associate Director, Education and Employment Issues,

General Accounting Office. Would you please come up to the witness stand?

[Witnesses sworn.]

Mr. LANTOS. Please be seated. We will begin with you, Mr. De La Rosa. We are pleased to have you. Your prepared statement will be entered in the record in its entirety. We would be grateful if you could summarize it and if you could identify the gentleman accompanying you.

STATEMENT OF JULIAN DE LA ROSA, INSPECTOR GENERAL, DEPARTMENT OF LABOR, ACCOMPANIED BY GERALD W. PETERSON, ASSISTANT INSPECTOR GENERAL FOR OFFICE OF AUDIT

Mr. DE LA ROSA. Thank you very much, Mr. Chairman. The gentleman on my right is the assistant inspector general for my Office of Audit Mr. Gerald W. Peterson.

Mr. LANTOS. We are happy to have you, Mr. Peterson.

Mr. DE LA ROSA. I might add that Mr. Peterson has a great deal of knowledge concerning the JTPA program since he has been involved in its oversight since its inception.

I have been asked to talk about the Job Training Partnership Act [JTPA], as we have been referring to it, and the activity specifically known as on-the-job training or [OJT]. It is my understanding that you are particularly interested in the use of OJT funds to finance the training of individuals working in Puerto Rico for American Home Products.

Although my office has not done any specific work with respect to this company, at the request of the subcommittee, we have obtained the relevant OJT contracts. We are also currently reviewing relevant documentation, onsite in Puerto Rico, concerning the amount of OJT funds that have been paid to this company. As you may be aware, the Office of the Inspector General has devoted a significant portion of its audit and investigative resources over the years, to JTPA matters, including OJT. The work that we have done with respect to OJT has indicated serious problems and abuses and a need for much greater control and oversight.

For example, in 1988 the Office of the Inspector General completed a nationwide review of JTPA training. Based upon a sample of 3,300 participants, we reported that OJT constituted almost half of all occupation-specific training carried out under JTPA. We also found that 60 percent of the employers we had surveyed, as part of our audit, said that they would have hired the participants without the JTPA subsidy. We also found that over 80——

Mr. LANTOS. I want to get back to that later on, but that merely means that 60 percent then of those funds were wasted.

Mr. DE LA ROSA. That would appear to be the conclusion, which I later will discuss. I want to emphasize in that particular area, though, that one of the things we did not do is to ask them why they would have hired those employees; was there something else that drove them to do that? But, they did admit that they would have hired them without the particular subsidy.

Over 80 percent of the OJT participants in our sample entered into unsubsidized employment following the training. This can be compared with our finding that 70 percent of all JTPA participants

in the sample of 3,300 participants were placed in unsubsidized employment following the termination of their JTPA services.

However, undercutting these successful placement rates were our findings that the JTPA program was targeting easy-to-place individuals—since 60 percent of the participants were high school graduates—and was only providing short-term training with an average duration of approximately 3 months. Further, within 4 months after the termination of their JTPA program training, almost half of the individuals placed in unsubsidized employment were unemployed.

In our opinion, the emphasis, on immediate placement without regard to who was served or whether they were retained in employment was caused primarily by the Employment and Training Administration's performance standards. The standards in effect at that time, narrowly focused the JTPA system on the single goal of getting participants into jobs.

I am pleased to report that the performance standards being utilized today do consider JTPA participants' employment rates and earnings 13 weeks following their termination from JTPA training. This helps to focus the system, to some degree, toward longer term, more stable employment and increased income for participants. Further, legislative proposals currently pending in the Congress would mandate even more specific "targeting" of the hard to serve.

Since we published the results of our nationwide review in 1988, we have reviewed OJT activity at specific sites on several occasions. In doing so, we have come across a phenomenon known as "brokering."

In 1989, during the audit of a Houston Job Training Partnership Council, we reviewed a sample of 40 OJT contracts totaling $4.5 million in OJT expenditures. We found that only about 30 cents on every training dollar was listed to reimburse OJT employers, while the remaining 70 cents went in payments to "brokers."

Under the usual broker arrangement, a JTPA service delivery area contracts with an intermediary to broker, that is, to negotiate and monitor contracts with OJT employers. While the employers provide the training, brokers are paid for achieving specified participant outcomes such as enrollment, completion of training, placement and retention in unsubsidized employment.

In 1991, we published an audit report based upon a review of broker contracts at nine service delivery areas. Of the 7,500 participant cases we reviewed, we found questionable payments to brokers amounting to over $3.5 million. These payments were the results of several factors: Particularly that a few of the participants were already working for the employers before being enrolled in OJT and that broker claims for payments were not supported by documented outcomes.

Two more recent audits have found additional OJT improprieties.

Mr. LANTOS. Has the Department of Labor recovered that $3.5 million?

Mr. DE LA ROSA. Not to my knowledge. That is something we can determine for you and report back. There may have been reasons, because there are reviews, of course. The results of our audits go to a review process and they may have made a determination

as to whether or not the entire sum ought to be recovered or some portion of it ought to be returned.

There are two other audits where we have found improprieties. First, an audit in South Carolina that found that an OJT broker had an arrangement with approximately 23 employers throughout the State to refer individuals who had already been hired to the broker for JTPA screening. The broker then received fees for recruiting, assessing and referring the same individuals back to their employers for OJT training.

Mr. LANTOS. Would that be fraud?

Mr. DE LA ROSA. Possibly, and I will refer to that in just a moment also. The broker, as I indicated, referred the same individuals back to their employers for this OJT training. Further, the employers were reimbursed with JTPA funds for 50 percent of the wages for individuals they had already hired.

The service delivery area did not discover these improprieties because SDA monitoring reviews were performed at the broker's offices rather than at the employer worksites. We questioned approximately $1.3 million in OJT payments for the recruitment of 1,099 individuals. We have asked the Employment Training Administration to not take any further actions on to this matter, at this time, because the Office of Inspector General has it under criminal investigation.

Second, an audit in Kentucky found that JTPA funds totaling $6.7 million were improperly used to recruit, assess, and provide OJT as part of an incentive package to attract a new company to that State. The Kentucky company hired 3,126 skilled, highly-qualified employees. Of these individuals, we determined that only 342 were certified to be eligible for JTPA assistance.

The State had claimed that the $6.7 million—which averaged to over $19,000 per person—were necessary training costs chargeable to the JTPA program. However, our audit found that the company had made no commitment, contractually or otherwise, to train the OJT participants; and that the company did not incur any extraordinary expenses, costs, or reduced production as a result of hiring these individuals.

In April 1992, the Assistant Secretary for Employment Training issued a statement on our Kentucky audit which said, in part, that "JTPA is designed to serve economically disadvantaged individuals—people who have no labor market experience and who would not be able to get jobs without the training and support which JTPA provides." The Employment and Training Administration has issued an initial determination in this matter, which disallows all of the costs questioned by us in the Kentucky audit.

In your letter of invitation to me you asked about the OIG criminal investigations and I must report to you that, in addition to the extensive audit work that we are performing in this area, we are conducting an increasing number of criminal investigations.

For example, we recently conducted an investigation in Los Angeles which determined that two individuals had devised and executed a scheme to defraud the program of $140,000. These individuals claimed numerous OJT placements for two companies which, in fact, only had a few employees. To facilitate this particular scheme, these individuals recruited friends and relatives, who

signed false papers using their own names, or aliases, in exchange for individual payments of $100. Both individuals were indicted. Earlier this year, they pled guilty and one is now serving 18 months in prison.

In another scheme, currently under investigation in Michigan, a grand jury returned a 208 count indictment against three individuals. The indictment charges them with theft, embezzlement, and conspiracy to fraudulently obtain over $152,000 in JTPA funds. The indictment alleges that the defendants recruited individuals to enroll for training by informing them that various grants were available, even though these individuals may not have been eligible.

Now, these are but two examples. We have seen an increase in these investigations to the point that now approximately 10 percent of the effort of our Office of Investigations is on allegations involving OJT solely, with over 20 percent of our investigations involving JTPA investigations in general.

Because we are seeing more and more criminal investigations of substantial fraud, we are concerned that this further indicates that there is room for abuse.

It is the opinion of the Office of Inspector General that the problems relating to OJT have been caused by poor contracting practices, insufficient monitoring by both Federal and State agencies, and inadequate targeting of participants. In an attempt to rectify these problems, OJT has been specifically addressed in both the current House and Senate bills that seek to amend the JTPA. Both bills limit the duration of OJT and require that the lengths of training be based on recognized reference material, such as the Dictionary of Occupational Titles.

These bills further require that OJT contracts specify the types and duration of training in sufficient detail to allow for a fair analysis of the reasonableness of proposed costs. Broker contracts must specify these services that are to be provided directly by the broker, as well as these services to be provided by employers who are conducting the OJT. Further, the bills require that brokers monitor their subcontractors, the OJT employers, for compliance prior to making these payments.

These two bills contain general provisions applicable to all JTPA activities and which establish uniform procurement standards, including the requirement for analyses of costs and prices prior to contracting. These bills also impose more stringent monitoring requirements. Finally, these bills will require that the JTPA system target hard to serve individuals.

We have worked diligently with the Employment and Training Administration and the Congress in coming to this point and we strongly support these efforts. We would hope that you, Mr. Chairman, and the members of this subcommittee will support these changes. This concludes the summary of my testimony and I am prepared to answer any questions from the members of the subcommittee.

[The prepared statement of Mr. De La Rosa follows:]

STATEMENT OF
JULIAN W. DE LA ROSA
INSPECTOR GENERAL
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMITTEE ON EMPLOYMENT AND HOUSING
COMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES
JULY 30, 1992

Mr. Chairman and Members of the Subcommittee,

Thank you for inviting me to testify before you today in my oversight capacity as the Inspector General of the U.S. Department of Labor. I am accompanied this morning by Gerald W. Peterson, Assistant Inspector General for Audit.

I have been asked to talk about the Job Training Partnership Act ("JTPA") activity known as "OJT," or "on-the-job training." It is my understanding that the Subcommittee is particularly interested in the use of OJT funds to finance the training of individuals working in Puerto Rico for American Home Products Corporation. Although my office has not done any specific work with respect to this company, at the request of the Subcommittee we have obtained copies of relevant OJT contracts. We are also

currently reviewing relevant documentation concerning the amount of OJT funds paid to this company.

However, as the Members of this Subcommittee may be aware, my office has devoted a significant portion of its resources, both audit and investigative, to JTPA matters, including OJT. The work that we have done with respect to OJT has indicated serious problems and abuses, and a need for much greater control and oversight with respect to this activity.

Background

OJT basically involves placing an eligible JTPA participant with an employer for a specified period of time so that the participant can learn a specified occupation. During the training period, the JTPA program subsidizes the employer for up to 50 percent of the individual's wages. The JTPA participant must be paid the same benefits and have the same working conditions as regular employees. In addition, the JTPA participant cannot displace a current or laid off employee.

OJT costs are considered to be compensation to employers for the extraordinary costs associated with training JTPA participants as well as compensation for the costs associated with the lower productivity of such participants.

In theory, the OJT training provided to an individual should assist that individual in maintaining employment with the OJT employer even after the OJT subsidy expires, or obtaining unsubsidized employment in a similar job.

OIG Oversight

In 1988, the Office of Inspector General completed a nationwide review of JTPA training. Based upon a sample of 3300 participants, we reported that OJT constituted almost half of all occupation-specific training carried out under JTPA. We also found that approximately three-quarters of adults and two-thirds of youth completed their OJT training. This training was primarily in clerical, sales, and service occupational fields and lasted anywhere from approximately 100 hours to over 1,000 hours. The average reimbursements to employers was about $1,200 for each adult and $1,000 for each youth.

As part of our audit, we sent out questionnaires to those employers who provided OJT to the participants in our study. In the questionnaires, we asked the employers whether they would have hired the individuals without the OJT wage subsidy. Almost 86 percent of the employers responded, and 60 percent said that they would have hired the participants without the JTPA subsidy.

We also found that over 80 percent of the OJT participants in our sample entered unsubsidized employment following training. This figure can be compared with our finding that 70 percent of all JTPA participants in the sample were placed in unsubsidized employment following termination from JTPA services. However, underlying, or more accurately, undercutting, these successful placement rates were our findings that the program was targeting easy-to-place individuals, since 60 percent of the participants were high school graduates, and was only providing short-term training with an average duration of approximately 3 months. Further, almost half of the individuals placed in unsubsidized employment were unemployed 4 months after their termination from the JTPA program.

In our opinion, the emphasis on immediate placement without regard to who was served or whether they were retained in employment was caused primarily by the Employment and Training Administration's performance standards. The JTPA requires the Secretary of Labor to promulgate these standards as a means to measure the success of the JTPA program. However, the standards in effect at that time narrowly focused the JTPA system on the single goal of getting participants into jobs.

I am pleased to report that the performance standards utilized today include employment rates and earnings of JTPA participants at 13 weeks following termination from JTPA training, thus focusing the system in some degree toward longer-term, more stable employment and increased income for participants. Further, legislative proposals currently pending in Congress would mandate even more specific "targeting" of hard-to-serve individuals.

Since we published the results of our nationwide review in 1988, we have reviewed OJT activity at specific sites on several occasions. In doing so, we have come across a phenomenon known as "brokering."

In 1989, during an audit of the Houston Job Training Partnership Council, we reviewed a sample of 40 OJT contracts which totalled $4.5 million in OJT expenditures. We found that approximately 30 cents on every training dollar reimbursed OJT employers, while the remaining 70 cents went in payments to "brokers." Under the usual broker arrangement, a JTPA service delivery area contracts with an intermediary to broker, that is, to negotiate and monitor contracts with OJT employers. While the employers provide the training, brokers are paid for achieving specified participant outcomes such as enrollment, completion of training, placement, and retention in unsubsidized employment.

Further, we found that the brokers were allowed to establish OJT training in any occupation, at any length, and at any hourly wage. There was no consistency among training lengths and wages for the same occupation. For example, in the Houston service delivery area, training lengths for security guards ranged from 80 to 320 hours at a cost to JTPA ranging from $1.75 to $4.50 per hour. Parenthetically, I would note that the State of Texas only required 30 hours of training to certify an individual to work as a security guard.

In 1991, we published an audit report based upon a review of OJT broker contracts at nine service delivery areas. Of the 7,500 participant cases that we reviewed, we found questionable payments to brokers amounting to over $3.5 million. These payments were a result of several factors, including:

-- Participants were already working for employers before being enrolled in OJT, and;
-- Broker claims for payments were not supported by documented outcomes.

Two more recent OIG audits have found additional OJT improprieties. The first audit, in South Carolina, found that an OJT broker had an arrangement with approximately 23 employers

throughout the state to refer individuals who had already been hired to the broker for JTPA "screening." The broker then received fees for recruiting, assessing, and referring the same individuals back to their employers for OJT training. Further, the employers were reimbursed by JTPA for 50 percent of the wages for individuals they had already hired. The service delivery area did not discover these improprieties because their monitoring reviews were performed at the broker's offices and not at the employer worksites. We questioned OJT payments totaling $1.3 million for 1,099 individuals. We have asked the Employment and Training Administration not to take any further action in this matter because OIG has an ongoing criminal investigation.

The second audit, in Kentucky, found that JTPA funds totaling $6.7 million were improperly used to recruit, assess, and provide OJT as part of an incentive package to attract a new company to the state. The Kentucky company hired 3,126 skilled, highly qualified employees, but OIG determined that only 342 of these individuals were certified to be eligible for JTPA assistance.

The State claimed that the $6.7 million (averaging over $19,700 a person) were necessary training costs chargeable to JTPA. But our audit found that the company had made no commitment, contractually or otherwise, to train OJT participants, and that the company did not incur any

extraordinary training costs or reduced production as a result of hiring these individuals.

In April 1992, the DOL Assistant Secretary for Employment and Training issued a statement on the Kentucky audit which said, in part, "JTPA is designed to serve economically disadvantaged individuals--people who have no labor market experience and who would not be able to get jobs without the training and support which JTPA provides." The Employment and Training Administration has issued an initial determination in this matter which disallows all of the costs questioned by OIG in the Kentucky audit.

OIG Criminal Investigations

In addition to our extensive audit work in this area, OIG has also conducted an increasing number of criminal investigations concerning the use of OJT funds.

For example, we conducted an investigation in Los Angeles which involved two individuals who devised and executed a scheme to defraud the JTPA program of $140,000. These individuals, Ezra Bolds and Ronald Bible, claimed numerous OJT placements for two companies which, in fact, only had a few employees. To facilitate the scheme, friends and relatives were recruited by

the defendants to sign false papers using their own names or aliases, in exchange for payments of approximately $100. False papers indicating OJT placements were also submitted in Bible's handwriting. In September, 1991, a grand jury returned a 25 count indictment against Bolds and Bible and earlier this year, both individuals pled guilty to five counts. Bolds was subsequently sentenced to 15 months in prison and was ordered to pay $12,500 in restitution. Bible received an 18 month prison sentence.

In another recent case in Michigan, a grand jury returned a 208 count indictment against three individuals, charging them with theft, embezzlement, and conspiracy to fraudulently obtain $152,000 in JTPA funds. The indictment alleges that the defendants entered into agreements to provide subsidized training to 85 participants in the field of jewelry training. The defendants then recruited individuals to enroll for the training by informing them that various grants were available, even though these individuals may not have been eligible for JTPA training. Once enrolled, some participants never received any training and others quit after receiving some training. The defendants also persuaded some participants to enroll by using the names of relatives so additional OJT payments could be generated. The indictment also accused two of the defendants with conspiring to obstruct the government investigation by tampering with

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government witnesses. Trial in this matter is set for September.

In another example of our investigative activity in this area, we received information earlier this year that the organization which administers JTPA program funds in Puerto Rico had approved a $1.1 million OJT contract to train approximately 60 persons to serve as hosts for a Puerto Rican exhibit at the Expo '92 exhibition in Spain. However, the persons identified for the training were already highly educated and experienced. Although our investigation did not result in a referral for criminal prosecution, we issued an investigative memorandum to the Employment and Training Administration and, as a result of our findings, much of the money has been restored to the JTPA program.

My Office of Investigations is committed to investigating OJT and other JTPA-related fraud. These investigations are extremely important because the persons that are harmed the most by such fraud are the economically and otherwise disadvantaged persons which the JTPA program is designed to serve.

Recommendations

In the opinion of the Office of Inspector General, the problems related to OJT have been caused by poor contracting practices and insufficient monitoring by both federal and State agencies, as well as inadequate targeting of participants.

In an attempt to rectify these problems, OJT has been specifically addressed in both the current House and Senate bills to amend JTPA. Both bills limit the duration of OJT and require training lengths to be based on recognized reference material, such as the Dictionary of Occupational Titles. The bills further require OJT contracts to specify types and duration of training in sufficient detail to allow for a fair analysis of the reasonableness of proposed costs. Broker contracts must specify the services to be provided directly by the broker and the services to be provided by employers conducting the OJT. Further, brokers must monitor their subcontractors, the OJT employers, for compliance prior to making payments.

The House bill contains a provision that prohibits OJT training contracts with employers who have consistently failed to hire and pay former OJT participants the same as other employees.

These two bills also contain general provisions applicable to

all JTPA activities which establish uniform procurement standards, including a requirement for analyses of costs and prices prior to contracting, and impose more stringent monitoring requirements. In addition, these bills require the JTPA system to target hard-to-serve individuals.

The Office of Inspector General strongly supports efforts to enact JTPA legislation which addresses these issues, and I would urge this Subcommittee to support these efforts.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or any other Members of the Subcommittee may have.

Mr. LANTOS. Mr. Inspector General, this is your first appearance before this subcommittee?

Mr. DE LA ROSA. Yes.

Mr. LANTOS. I want to welcome you. I was very much impressed by your testimony, and I look forward to working with you for a long time on our common objectives.

Mr. DE LA ROSA. Thank you. I appreciate the opportunity to appear before you today.

Mr. LANTOS. We appreciate you being here.

Mr. Crawford, your prepared statement will be entered in the record and you may summarize as you wish.

Mr. CRAWFORD. Thank you, Mr. Chairman. Mr. Chairman, I would first like to introduce Sigurd Nilsen to my left. He is an assistant director in our area and he has also been very much involved in the JTPA program over the years.

Mr. LANTOS. We are pleased to have you.

STATEMENT OF CLARENCE C. CRAWFORD, ASSOCIATE DIRECTOR, EDUCATION AND EMPLOYMENT ISSUES, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY SIGURD R. NILSEN, ASSISTANT DIRECTOR

Mr. CRAWFORD. As I mentioned, we are pleased to be here today to share with you the results of our work over the past 5 years concerning mismanagement and abusive practices in the JTPA program. In summarizing my written statement, I will focus on abuses in the OJT training component.

I will also touch upon JTPA cost reporting and contracting problems. These problems underscore the need for better Federal and State oversight to insure that limited funds are properly used and that waste, abuse, and mismanagement are avoided. Although we did not have particular knowledge of this current situation involving Puerto Rico, our work has shown that service delivery areas, SDA's, are wasting scarce JTPA resources.

They entered into lower skill contracts for OJT that exceed training duration suggested by Labor and they entered into other OJT arrangements with employees that appear improper.

Such practices, in effect, subsidize portions of an employee's expenses and provide training of questionable value. They also waste scarce resources and further limit access to the program. We found abuses of OJT contracts in the past and we believe similar abuses may be occurring today.

In our 1988 testimony and subsequent report, we noted many OJT contracts for lower skilled jobs, such as dishwasher, housekeeper, and laundry worker exceeded Labor's suggested training time. From a nationwide sample, we found that over half of the lower skilled OJT contracts were excessive.

Our 1991 report showed that OJT contracts for excessive training for lower skilled jobs continues to be a problem. Nearly 73 percent of the 5,758 contracts for lower skilled jobs that we reviewed exceeded Labor's suggested training times for the positions and on average exceeded Labor's guidelines by 6 weeks.

Mr. Chairman, turning your attention to the chart on your left, you can see that the amount of excessive training ranged from an

average of 2 weeks in SDA D, which would be the fourth from your left, to an average of 12 weeks in SDA A.

Mr. LANTOS. Where is SDA A?

Mr. CRAWFORD. That is in Massachusetts, located in Massachusetts, and SDA D is in Rhode Island.

Mr. LANTOS. How about, what is——

Mr. CRAWFORD. Let me just do this then.

Mr. LANTOS. Just tell me where SDA E and where SDA H is.

Mr. CRAWFORD. SDA E, is in Connecticut.

Mr. LANTOS. And SDA H.

Mr. CRAWFORD. SDA H is Illinois. Here are a couple of examples of what we found. In Michigan, 40 days for training a fastfood worker and in Illinois, 120 days or 6 months to train a carwash attendant, the example you mentioned in your statement, Mr. Chairman. The cost of the 558 lower skilled contracts——

Mr. LANTOS. You know, training a carwash attendant for 6 months is so preposterous and so outrageous and such a blatant ripoff of the American taxpayer that I wonder what Secretary Martin will have to say in responding to this, because this is all happening under her watch and I just find it incomprehensible that the Department of Labor would approve a 6-month training program for a carwash attendant. It is a carry catcher of what government ought not to do and ought not to be. Please go ahead.

Mr. CRAWFORD. And of that $691,000 that was spent on the lower skilled contract, about 36 percent, or $251,000, or so we believe was excessive. We also found other abuses.

Mr. LANTOS. Excessive is a kind way of saying it was a waste.

Mr. CRAWFORD. Yes, sir. It would appear to be a waste. We also found other abuses in nine SDA's in which OJT contracts were used to train individuals who already had significant work experience in the jobs for which they were being trained. About a quarter of the 386 individuals that we reviewed had at least a year of prior experience in the field for which they were being trained.

What we did there was we looked at the salaries of the individuals for which they had a work history where we could make this type of analysis. For example, one SDA developed a 12-month OJT contract to train an oil burner technician who already had 5 years of experience in that occupation.

We also found instances in half of the 12 SDA's where OJT contracts were used to subsidize a current employee's wages and provide training normally paid for by the employer. For example, one SDA entered into a 4-month contract with a company to train a radio TV technician. The trainee had been on the company's rolls for 2 weeks and was already being trained when the OJT contract began.

We first reported abuses in 1988 testimony and in subsequent response to concerns raised by the Senate Appropriations Committee, the Secretary stated that the Labor Department was aware of the problem and was taking measures to address the situation.

Further, in written comments to our 1989 report, the Secretary said that the Labor Department was considering legislative and/or regulatory options to address this issue. And she expected the problem would gradually cease to exist. Yet, in work leading to our

1991 report, we again found numerous instances of OJT contract abuses.

As was mentioned earlier, the House and Senate conference committees are considering amendments to the JTPA act. These bills would limit the length of OJT time to what is reasonably needed to acquire skills for a particular occupation, but in no instance could OJT exceed 6 months.

Also in determining the length of such training, consideration is to be given to recognized reference materials such as Labor's Dictionary of Occupational Titles and the participant's prior work experience. These provisions, if enacted, should help eliminate many of the abusive practices. However, even the best laws are subject to abuse and improper practice if inadequate oversight continues to occur.

Mr. Chairman, I wish to quickly touch on two other JTPA management issues, problems in accurately reporting program costs and shortcomings in contracting. In 1991, we found that over half of the SDA's under reported administrative costs and, if properly reported, these costs would have exceeded administrative limitations by an average of 68 percent. This practice of misrepresenting program expenditures in effect circumvented JTPA's statutory limitations.

In a 1992 report, we found similar problems with 27 percent of the SDA's nationwide reporting administrative costs being charged to the participant support category.

Concerning the contract abuse, much has been said and I will just mention that in the 8 of the 12 SDA's that we looked at, we found similar problems.

Mr. Chairman, as previously noted, adequate oversight is the key to minimizing and detecting JTPA waste, abuse, and mismanagement. Unfortunately, we have concluded that program oversight at the Federal and State levels has been inadequate. In commenting on our 1991 report, Labor stated that its proposed amendments to JTPA would address most of our recommendations.

Labor also took other actions which are a step in the right direction for strengthening JTPA. Pending are amendments which incorporate most of Labor's proposals, if enacted, and should contribute to improved program management.

However, Labor needs to oversee the program to insure that limited JTPA funds are being used properly. Mr. Chairman, this concludes my prepared statement and I would be happy to answer any questions that you or other members of the subcommittee may have. Thank you.

[The prepared statement of Mr. Crawford follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Employment and Housing
Committee on Government Operations
House of Representatives

For Release on Delivery
Expected at 9:30 a.m., EDT
Thursday, July 30, 1992

THE JOB TRAINING PARTNERSHIP ACT

Abuse of On-The-Job Training and Other Contracting is an Ongoing Problem

Statement of Clarence C. Crawford, Associate Director
Education and Employment Issues
Human Resources Division

GAO/T-HRD-92-47

SUMMARY OF TESTIMONY BY CLARENCE C. CRAWFORD
JOB TRAINING PARTNERSHIP ACT
ABUSE OF ON-THE-JOB TRAINING
AND OTHER CONTRACTING PRACTICES

The Job Training Partnership Act (JTPA) provides job training and employment seeking skills to economically disadvantaged individuals. One of the major types of training provided by JTPA is on-the-job training (OJT). Under OJT arrangements, employers provide training in a particular occupation for a specified length of time. Normally, the employer is reimbursed for half of the participant's wages in recognition of the expense associated with training. GAO's work over the past 5 years has shown that local service delivery areas (SDAs) are wasting JTPA funds by developing questionable OJT contracts.

Abuse of On-The-Job Training. Many OJT contracts for lower skill occupations, such as car wash attendant, hotel maid, and fast-food worker, are for excessive periods of time. For example, one SDA developed a 6-month OJT contract to train a car wash attendant. Nearly three-fourths of the lower skill contracts GAO reviewed in 11 SDAs exceeded the Department of Labor's suggested training time for these jobs. In addition, about one-fourth of a sample of OJT participants for whom work histories were available at 9 SDAs had at least 1 year of experience in the job for which they were being trained.

JTPA Amendments Address OJT Abuse. Both the House and Senate have passed bills that address questionable OJT practices. Both bills limit the length of time OJT could be provided for a particular occupation and suggest that recognized reference materials, including Labor's suggested training times, and the participant's work experience be considered in determining the length of training.

Other Program Management Problems. Improper spending of JTPA funds on program administration reduces the funds available for training. In addition, inadequate contract administration leaves the program vulnerable to waste, abuse, and mismanagement. For example, GAO found that SDAs made improper payments to training vendors, allowed payments to vendors who failed to meet performance requirements, and reimbursed vendors for unsupported expenditures.

Lack of Federal and State Oversight. State agencies, which have the primary responsibility for overseeing JTPA implementation, often failed to detect excessive or questionable OJT contracts as well as other inadequate procurement practices. Until recently, Labor's oversight had not been directed at identifying improper or questionable procurement practices. Labor's programwide series of special reviews are a step in the right direction to strengthening JTPA program monitoring and oversight. However, Labor needs to continue to actively monitor program implementation.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to share with you the results of our work over the past 5 years relating to mismanagement and abusive practices within the Job Training Partnership Act (JTPA) program. My testimony will focus primarily on the abuse of on-the-job training (OJT) funds within the program. I will also touch briefly on other problems we have noted with this program, namely the failure to accurately report program costs and shortcomings in contracting procedures. These practices indicate the need for better federal and state oversight to ensure that limited JTPA funds are used only for authorized training services, and that waste, abuse, and mismanagement are avoided.

BACKGROUND

JTPA provides job training and employment seeking skills to economically disadvantaged adults and youth. Although the Department of Labor has overall responsibility for the program, JTPA is highly decentralized, with most participants receiving job training services through programs administered by the 56 states and territories and over 600 local programs called service delivery areas (SDAs). JTPA has been relatively successful in placing participants in jobs. Beginning with the first full year of program operations (1984), it has placed an average of over 60 percent of its participants in jobs each year.

SDAs provide employment and training services either directly or through agreements or contracts with other service providers. JTPA services include occupational training and basic education, normally provided in a classroom setting; OJT and work experience[1] at an actual job location; and job search assistance.

OJT gives JTPA participants an opportunity to earn a wage while receiving direct, "hands-on" experience in a specific occupation, at an actual work site. Under OJT arrangements, employers provide JTPA participants with training in a particular occupation for a specified length of time. Normally, the employer is reimbursed for half of the participant's wages in recognition of the expense associated with training. On average, over 22 percent of JTPA participants are enrolled in OJT each year. In terms of placements, OJT has been highly successful, with an average of nearly 80 percent of participants being placed in jobs.

ABUSIVE PRACTICES FOUND IN ON-THE-JOB TRAINING

Our work has shown that SDAs were wasting scarce JTPA resources by entering into lower skill OJT contracts that exceed the length of training suggested by Labor and

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[1]A training activity consisting of short-term or part-time work designed to develop good work habits and basic work skills.

by entering into other OJT arrangements with employers that appeared improper. Such practices, in effect, subsidize portions of an employer's salary costs and training expenses and provide training of questionable value. Because the level of JTPA funding allows the program to serve only a small fraction of those who are eligible, wasting scarce resources further limits access to the program by those eligible to participate.

Excessive Lengths of OJT

In our recent JTPA work, we found abuses of OJT contracts within the program and believe that similar abuses may still be occurring. In September 1988 testimony before the House Education and Labor Committee[2] and in our subsequent report,[3] we noted that many OJT contracts for lower skill jobs, such as dishwasher, housekeeper, and laundry worker, allowed more training time than Labor suggested training time for these occupations. At 63 randomly selected SDAs, we found that over 55 percent of the lower skill OJT contracts we reviewed were for excessive lengths of time.

Our 1991 report,[4] based on work in six states and at 12 SDAs, showed that OJT contracts for excessive training for lower skill jobs continued to be a problem in the program. We reviewed 558 OJT contracts for lower skill jobs (for example, car wash attendant, hotel maid, and fast-food worker) at 11 of the 12 SDAs[5] and compared the length of training of each with Labor's suggested training times for these types of jobs. We defined lower skill jobs as those that, according to Labor, require no more than 3 months of training. About 73 percent of the 558 lower skill OJT contracts exceeded Labor's suggested training times for these positions and, on average, exceeded Labor's guidelines by 6 weeks. As shown in figure 1, the amount of excess training at the 11 SDAs ranged from an average of 2 weeks at one SDA to an average of 12 weeks at another.

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[2]Job Training Partnership Act: Participants, Services, and Outcomes (GAO/T-HRD-86-31, Sept. 29, 1988).

[3]Job Training Partnership Act: Services and Outcomes for Participants With Differing Needs (GAO/HRD-89-52, June 9, 1989).

[4]Job Training Partnership Act: Inadequate Oversight Leaves Program Vulnerable to Waste, Abuse, and Mismanagement (GAO/HRD-91-97, July 30, 1991).

[5]One SDA had no OJT contracts during the period reviewed.

Figure 1: Suggested and Contracted Training Times for Lower Skill OJT

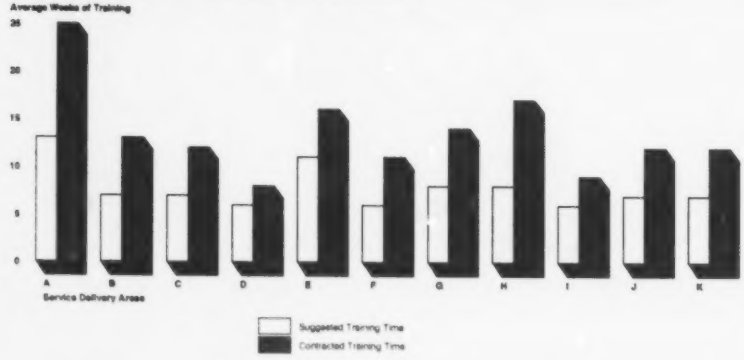

Table 1 provides some examples of excessive lengths of training, including 40 days of training for a fast-food worker, 71 days for a kitchen helper, and 129 days for a car wash attendant. The cost to JTPA for the 558 lower skill OJT contracts was about $691,000, of which about 36 percent ($251,000) was for excess training.

Table 1: Examples of Excessive OJT for Lower Skill Jobs
(Recommended training time of 30 days or less)

Occupation	Length of OJT (days)
Fast-food worker	40
Hotel maid	65
Meat wrapper	65
Kitchen helper	71
Laundry attendant	73
Rug cleaner	80
Car wash attendant	129

Note: These examples are from four of the SDAs in our 1991 study.

Other OJT Abuses

During our 1991 work, we found instances in nine SDAs where OJT contracts were used to train individuals who already had significant work experience in the jobs for which they were being trained. About a quarter of the 386 sampled individuals for whom work histories were available had at least 1 year of prior experience in the field for which they were being trained (see table 2). For example, one SDA developed a 12-month OJT contract with an employer to train as an oil burner technician a participant who already had 5 years' experience in this job. Another SDA developed a 4-month OJT contract to provide training as a delivery driver to a participant with 5 years' experience in this job.

Table 2: Examples of Significant Prior Experience in OJT Occupation

Occupation	Months of OJT training	Years of prior experience
Custodian	3	19
Draftsman	4	14
Tool/die worker	5	12
Welder	6	7
Oil burner technician	12	5
Delivery driver	4	5
Security guard	4	3

Note: These examples are from four of the SDAs in our 1991 study.

We also found instances at six of the 12 SDAs visited where OJT contracts were used to subsidize a current employee's wages and to provide training normally paid for by the employer. For example, one SDA entered into a 4-month contract with a company to train a radio and television service technician. The OJT trainee had been hired by the company 2 weeks before the OJT contract and was already being trained as a service technician when the OJT began. Another SDA developed a 6-month OJT contract with an employer to train a person who had been employed by that company for about 18 months in a similar position.

OJT Abuses an Ongoing Problem

We have noted continuing occurrences of OJT abuses over the past several years despite Labor assertions that the problem would be addressed. We first reported OJT abuses in JTPA in testimony in September 1988. The following March, in response to concerns expressed by members of the Senate Committee on

Appropriations,[6] the Secretary stated that Labor was aware of the problem and was taking measures to address the situation such as providing "...more specific guidance to the system on how OJT is to be administered." The Secretary went on to say that "...[we] will also be offering technical assistance in that respect." In addition, in written comments to our June 1989 report, the Secretary said that Labor was considering legislative and/or regulatory options to address this issue. She further noted that they ". . . expect that the types of lower skill OJT contracts identified in the GAO report as prone to excessive duration will gradually cease to exist."

We again found numerous instances of OJT contract abuses within JTPA during our work leading to our July 1991 report on federal and state program oversight and monitoring. In responding to that report, Labor stated that its legislative proposal relating to OJT and other initiatives was appropriate to limit questionable OJT practices.

JTPA AMENDMENTS ADDRESS OJT ABUSES

Both the House and Senate have passed bills to amend JTPA that would address the problems with the use of OJT contracts. The bills are now being considered by a joint conference committee. Both proposals limit the length of OJT to a period not to exceed the time generally needed to acquire the skills necessary for a position within a particular occupation, but in no instance longer than 6 months. Also, in determining the length of such training, consideration is to be given to recognized reference material, including Labor's suggested training times[7] and the participant's prior work experience. These provisions, if enacted, should help to eliminate many of the abusive practices we noted with respect to OJT contracts. However, even the best laws are subject to abusive and improper practices if adequate monitoring and oversight are not implemented--a shortcoming in JTPA we have noted in past work and one that I will discuss further.

OTHER PROGRAM MANAGEMENT PROBLEMS

Improper spending of JTPA funds on program administration has further reduced the amount available for training and placement assistance. In addition, questionable

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[6]The fiscal year appropriation for JTPA grants to the states was eventually reduced by $13 million following a Committee recommendation to ensure that inappropriate OJT wage subsidies were not paid to employers.

[7]The specific vocational preparation (training time) included in Labor's Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles.

contract administration and monitoring practices by SDAs have made contracting with training vendors vulnerable to potential waste, abuse, and mismanagement.

We reported in July 1991 that most of the SDAs we visited underreported administrative costs, thereby misrepresenting program expenditures and, in effect, circumventing the statutory limitation placed on administrative costs by JTPA.[8] If administrative expenditures had been charged properly, 7 of the 12 SDAs we reviewed would have exceeded the administrative cost limitation specified in the act by an average of 68 percent. In our 1992 report,[9] we pointed out that about 27 percent of the SDAs nationwide reported charges to the participant support cost category that appeared improper. These charges, which seemed to be administrative costs, included expenditures for staff salaries, rent, and office supplies.

Concerning JTPA contract administration, in our 1991 report we noted questionable practices at 8 of 12 SDAs reviewed. We reported instances where SDAs

- made payments to training vendors that were not in accordance with contract requirements (for example, payments were made before job retention requirements were met),
- did not comply with federal guidelines on providing partial payments to vendors (for example, substantial contract payments were made before significant services were provided),
- modified contracts to allow payment to vendors who failed to meet performance requirements (for example, contract time limits or placement wage requirements were modified to allow full payment to vendors), and
- reimbursed vendors for unsupported expenditures (for example, there was no assurance that reported costs were allowable and sufficiently documented).

LACK OF SUFFICIENT FEDERAL AND STATE JTPA OVERSIGHT

Mr. Chairman, as I previously noted, adequate program oversight is key to minimizing and detecting JTPA program waste, abuse, and mismanagement. Unfortunately, we have concluded that JTPA program oversight and monitoring at the federal and state levels is inadequate.

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[8]JTPA limits to 15 percent of available funds the amount that can be used for administration.

[9]Job Training Partnership Act: Actions Needed to Improve Participant Support Services (GAO/HRD-92-124, June 12, 1992).

State agencies, which have the primary responsibility for overseeing JTPA implementation, often failed to identify improper reporting of costs, questionable uses of on-the-job training, and inadequate procurement practices. Federal oversight also has not been directed at identifying improper practices or providing reasonable assurance that the program operates in accordance with the law, regulations, and sound management practices. Labor's oversight activities consist, generally, of broad policy guidance, limited technical assistance, and minimal scrutiny of program implementation and operation.

Our 1991 report contained recommendations for reducing the potential for program waste, abuse, and mismanagement. In commenting on this report, Labor stated that its proposed amendments to JTPA would address most of our recommendations. In addition, it said that other steps had been taken to respond to our recommendations, including conducting a programwide series of special reviews in the areas of JTPA procurement and on-the-job training, and undertaking state and SDA staff training initiatives.

These efforts are a step in the right direction for strengthening JTPA program monitoring and oversight. The pending amendments, which incorporate most of Labor's proposals, if enacted, should contribute to improved program management. However, Labor needs to oversee and monitor the program to ensure that limited JTPA funds are being used to the greatest extent possible to provide adequate training services to eligible individuals.

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Mr. Chairman, that concludes my prepared statement. I will be happy to answer any questions you or other members of the subcommittee may have.

Mr. LANTOS. Thank you very much, Mr. Crawford.

Mr. Machtley will have to leave shortly so I will turn over the questioning to him.

Mr. MACHTLEY. Thank you very much for yielding, Mr. Chairman. I have two brief questions. I have to leave and if possible I will be right back for the hearing. Mr. De La Rosa, in your testimony on page four you indicate in the first paragraph, "Furthermore, almost half the individuals placed in unsubsidized employment were unemployed 4 months after their termination from the JTPA."

If the purpose of JTPA is to get people who are going to be quality employees and employed for the long term, does this mean that we are paying for 50 percent of the people who, once they get off JTPA in your survey, are not employed? In other words, that the JTPA is not working for 50 percent of the people? Am I misreading this in your survey?

Mr. DE LA ROSA. If I understand your question correctly, sir, the targeting at the time these standards were being applied focused singly on getting somebody into a job, whether they worked 1 day or 1 hour. For the particular sample that we have discussed here, on average, within 4 months after completing OJT these people were gone.

So, there was no long-term benefit from the program. There was no long-term resolution to the unemployment situation. What happened to those individuals after that, I can't speak about at this point.

Mr. MACHTLEY. So we had 60 percent in this group who were high school graduates. I mean, this was not an enormously skewed sampling for those who are least likely to be employed. 60 percent were high school graduates.

Mr. DE LA ROSA. This was a random sample. It wasn't targeted to focus only on the high school graduates.

Mr. MACHTLEY. Right, but 60 percent were high school graduates. This is not a group of 90 percent high school dropouts.

Mr. DE LA ROSA. That is correct.

Mr. MACHTLEY. This is a group who you would think would be long-term employees. So what we have is a system where 50 percent of the group that we are training, after they have finished their job training program, are gone.

Mr. DE LA ROSA. That is correct.

Mr. MACHTLEY. Is that a fair assessment?

Mr. DE LA ROSA. That is correct.

Mr. MACHTLEY. Doesn't that sound like a hell of a way to run the railroad?

Mr. DE LA ROSA. Yes, sir.

Mr. MACHTLEY. Based on that, would you say we are wasting taxpayer dollars in the whole program?

Mr. DE LA ROSA. In the whole program per se?

Mr. MACHTLEY. Yes. 50 percent of the people who are hoping to have long-term employment are no longer employed, it would seem to me we are not doing the taxpayers any great service.

Mr. DE LA ROSA. You are looking at a single aspect based on our audit figures. I would not be one of those to condemn the entire program, per se. I think the concept of the program is good. It is

the monitoring of that program and the way it is being utilized that is challenging, as you can see from the results of GAO, as well as our audits.

If adequate monitoring were there, if the targeting was more specific, which we think the new legislation will provide for, then we believe it will be of greater benefit to those who most need this type of program.

Mr. MACHTLEY. And the final question is, on the GAO report—delighted to see the chart. I didn't understand the chart and that is why I was—the D is Rhode Island, which is the lowest of the groups. I was concerned at first when I heard our State mentioned but it does point out a concern——

Mr. LANTOS. That is directly related to your service on this subcommittee.

Mr. MACHTLEY. I would like to think I had that kind of impact but I am afraid I probably don't and it was pure luck, but the question is, if we have a standard, you say, OK, carwash attendant, here is the standard at which OJT ought to be available. Why do we pay for a cent beyond what that standard is? In other words, why don't we say, that is it, you get what you get and you better train him within that standard?

Mr. CRAWFORD. I think that that is the objective for Labor developing standards for the various occupations. I think part of it is the issue of inadequate oversight. The Department of Labor and the States haven't paid as much attention in looking into these kinds of abuses.

You have 628 or so programs being operated at the local level we feel that if you had the additional language that is contained in the amendments, as well as improved oversight, you could begin to ask some of those questions. People would stop these kinds of practices.

Mr. MACHTLEY. Well, wouldn't it be simple just to say, this is the standard, we will pay you this much for on-the-job training and no more? In other words, if you are a company and you have someone who spends 160 days learning to be a carwash attendant, you are only going to get, what I think also is outrageous, 129 days worth of training for being a carwash attendant?

Mr. CRAWFORD. I think——

Mr. MACHTLEY. Am I misreading this chart? In other words, people are able to go beyond——

Mr. NILSEN. That is true. There was no specific guidance provided to the local programs after JTPA was passed and when we went out and did our work, that is when we found these kinds of practices. The Department of Labor, in their approach to the program, took a hands-off approach in terms of overseeing the program. There was no specific guidance that said you have to follow specifically what the Dictionary of Occupational Titles provides in terms of guidance for training.

So it was up to the discretion of the local program and also the State for oversight. That is why one of our big concerns about the program is the oversight provided by the Department of Labor and we feel that the amendments go a long way to improving the oversight of the program.

Mr. MACHTLEY. Will the amendments solve this problem of excessive——

Mr. NILSEN. There is specific language in the amendments that say that the local SDA should follow guidance from authoritative sources like the Dictionary of Occupational Titles and in no case should an OJT contract be written for more than 6 months.

Mr. MACHTLEY. Thank you very much.

Mr. LANTOS. I must say, gentlemen, I find all of your testimony pretty shocking because here is an enormously valuable program potentially being mismanaged with no oversight, no controls, no supervision, with vast amounts of taxpayers' money wasted.

Your statement, Mr. Inspector General, that 60 percent of the employers would have hired these people anyway is a devastating statement. It is a devastating statement. What it means is that every single dime spent on the program involving that 60 percent could have been used elsewhere or could have been saved. It was money out the window.

But of course these outrageous practices of providing quote, unquote, "training a carwash attendant for six months," I failed to ask, was this an automatic carwash?

Mr. CRAWFORD. We are not sure. I hope not.

Mr. LANTOS. Well, I would like to know that. I would like to know that, because I must admit I am just appalled and shocked by the comments of all four of you gentlemen and I want to thank you very much for helping us.

Our last panel is Mr. Roberts Jones, Assistant Secretary of Labor for Employment and Training.

[Witness sworn.]

Mr. LANTOS. Please be seated. Mr. Jones, we are pleased to have you personally, but I need to raise an issue which may necessitate postponing this testimony. Are you familiar with committee rules that require the submission of prepared testimony 24 hours before the scheduled time of the hearing?

Mr. JONES. Yes, sir.

Mr. LANTOS. When was the Department of Labor advised of this hearing?

Mr. JONES. I don't know that. The letter is dated July 14. I don't know exactly what time it arrived at the department.

Mr. LANTOS. Well, we had telephone contact with your department in June specifying the time of the hearing. We received your testimony on the fax machine this morning. That is unacceptable, Mr. Jones. I would like to know what the reason is for the delay in submitting the testimony.

Mr. JONES. We will check into it and see. I know one part of it, Mr. Chairman, is that we included in it, as you can see, a significant amount of data from the reviews we are trying to do in Puerto Rico and the case that you have asked about. Some of that I know took recent time to put together.

I don't know specifically other than that but we will look into it and respond to it.

Mr. LANTOS. Mr. Jones, I have not had, of course, a chance to look at your testimony. We take not ourselves but the hearings seriously, the subject seriously and I would hope the Department of Labor does likewise. This topic is the subject of a second hearing next week and I will have to ask you to testify at that hearing because I simply cannot accept testimony if we don't have, according

to committee rules, the prepared testimony submitted as specified. Is there any comment you would like to make before we adjourn?

Mr. JONES. Well, I would hope that wouldn't be necessary. I think that our interest in addressing the issue is the same as yours. We are very concerned about it. We have a great deal of investment in resolving the issue. We have worked very hard in responding since the committee came to us in looking into the Puerto Rico situation and still have teams in place doing that and we are here to talk about that in any way you like.

Mr. LANTOS. Mr. Jones, we will be very anxious to hear your testimony. I have not seen your testimony. As with every other witness, I want to read it and study it, and since it is faxed to us at 8:10 this morning, that is simply not feasible.

So I regret the Department of Labor failed to adhere to committee procedures. I want to reemphasize those procedures and we will be most pleased to welcome you at the hearing next week when the second phase of this subject will be under our consideration.

Mr. JONES. Fine.

Mr. LANTOS. This hearing is adjourned.

[Whereupon, at 12:08 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

WASTE AND MISUSE OF FEDERAL ON-THE-JOB TRAINING FUNDS

WEDNESDAY, AUGUST 5, 1992

HOUSE OF REPRESENTATIVES,
EMPLOYMENT AND HOUSING SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2247, Rayburn House Office Building, Hon. Tom Lantos (chairman of the subcommittee) presiding.

Present: Representatives Tom Lantos, Matthew G. Martinez, Rosa L. DeLauro, and Ronald K. Machtley.

Also present: Stuart Weisberg, staff director and counsel; Lisa Phillips, professional staff member; June Livingston, clerk; Christina J. Tellalian, minority professional staff, Committee on Government Operations.

Mr. LANTOS. The Subcommittee on Employment and Housing will please come to order.

This morning, the subcommittee continues its hearings on the Job Training Partnership Act and whether scarce on-the-job training funds are being wasted and are not benefiting the economically disadvantaged. At last week's hearing, we heard testimony from the General Accounting Office about local agencies wasting JTPA funds by developing questionable on-the-job training contracts that provide for training periods that are far too long, such as a 6-month on-the-job training contract to train a car wash attendant.

We heard shocking testimony from the Labor Department inspector general about their recent study in which 60 percent of the employers said they would have hired the participants without this government subsidy. Parenthetically, it's an interesting commentary on how large corporations take government money when they get a chance to do so, even though they would have proceeded precisely on the same course without this government handout.

We will be examining the circumstances under which American Home Products came to enter into the on-the-job training contracts with the Puerto Rico Department of Labor and Human Resources to subsidize 50 percent of the wages of new employees for up to 50 weeks at its Guayama plant. American Home Products received nearly a quarter of a million dollars in Federal training subsidies for doing something it was going to do anyway; namely, hire and train people from the area, high school graduates, to work at its plant in Guayama, Puerto Rico.

In 1989, the same year American Home Products received a gift from the American taxpayer of almost a quarter of a million dol-

lars, AHP had a net income of about $1.1 billion. American Home Products manufactures Anacin, Advil, Dristan, Dimetapp, Robitussin, Chap Stik, Preparation H, and other health care products. I don't know if they make anything for a stomach ache, but this $250,000 training subsidy giveaway makes American taxpayers sick to their stomachs.

The Labor Department inspector general found that there is insufficient monitoring of on-the-job training contracts at the Federal, State, and local levels. The training contracts between American Home Products in Puerto Rico had many padded hours of on-the-job training, such as 10 hours of Federal training moneys to tell janitors about their compensation and benefits. American Home Products' nearly quarter-million-dollar rebate from JTPA funds received little or no monitoring from those responsible for administering JTPA programs.

When a consumer purchases three cans of Chef Boyardee's Teenage Mutant Ninja Turtles' pasta and sends three UPC proofs of purchase, a dated store receipt, and a completed application to American Home Products for a dollar rebate, that rebate request is checked and monitored more vigorously than its on-the-job training contracts in Puerto Rico were.

With so many economically disadvantaged adults and young people not receiving job training assistance because of the limited funds available, we must act, and this subcommittee will act, to ensure that these scarce funds are not wasted and that they are targeted to those most in need.

I would like now to turn to my distinguished colleague and friend from California, Congressman Martinez.

Mr. MARTINEZ. Thank you, Mr. Chairman. I'll make just a brief statement because it concerns me very much, because, in the previous Congress, I was chairman of the Subcommittee on Employment Opportunities, and we held many like hearings determining what the problems were with the Job Training Partnership Act and that part of it that deals with the on-the-job training.

One of the most significant things we heard was creaming, and the inability of the program managers to determine the intent of the law, which was to target the most needy, to target those that were hard to employ, those that were lacking high school diplomas, and those that were long-term unemployed people.

The mere fact that you have initiated these hearings on our part is extremely fortunate. These hearings that we are holding now, this first hearing that you held, has initiated the Department of Labor inspector general to move. That shows the American people that at least this committee is doing work that benefits the people of the United States.

It's amazing to me that, even though the affected union went to the Department of Labor and explained the situation, nobody took action until this subcommittee began investigating and scheduling these hearings. Although I belong to many committees, we all do here in Congress, I can truthfully say that this subcommittee's actions have instigated more changes for the good of citizens than most that I sit on.

The sad thing is that there are even more egregious examples of waste and misuse of on-the-job training funds than this example of

American Home Products. The GAO testimony that we heard last week listed situations where people were trained for 129 days to learn how to be car wash attendants, or where a rug cleaner was trained for 80 days, and a kitchen helper took 71 days to train. I could teach a kitchen helper all he needed to know in 1 day; likewise with the other jobs.

This is something that has plagued us from the beginning. The JTPA program, I believe, could be more successful than we ever imagined if only the funds were used properly. Unfortunately, there are too many examples, such as the one we have witnessed here today, or in the past, that we're holding this hearing on, which give opponents of this program ammunition against the worthiness of the JTPA program.

There is no question that there is a need for the on-the-job training program in Puerto Rico. I visited there several times, and I understand full well their situation. I have met with the Department of Labor there on the Job Training Partnership Act and other things, and I understand the high unemployment rate and the high dropout rate there. Yet, with the facts in front of us, we're still seeing JTPA funds being used to hire people with high school degrees and even A.A.'s and bachelor's degrees.

The amazing thing is that the company probably would have hired these people anyway, if they needed the labor force, which is one of the reasons they said that they moved there because they had experience with that labor force. What we must remember is that this program was never meant to be a tax subsidy for businesses; it was meant to help train and employ the neediest portion of our population, and, in Puerto Rico, it seems that there were many more worthy participants for this program.

Mr. Chairman, again, thank you for holding these hearings and for bringing these problems to the attention of those who need to be aware of the situation. Perhaps now we will find better oversight of contracts and use of the funds that are being used for the OJT and the job training partnership program.

Thank you, Mr. Chairman.

Mr. LANTOS. Thank you very much. Your last comment prompts me to recall some of our HUD hearings, where, as you recall, in a number of cases, the point was made that HUD subsidies were given for the building of units that served some public purpose. But the point was that there were far more deserving and needy areas where taxpayer dollars would have done far more good than they did in the cases of the HUD subsidies that went to favored, politically well-connected individuals or corporations.

That clearly is the issue here. Were these the people most in need of job training partnership funds, or were there others who would have needed and could have used these funds much more, since these people would have been hired anyway?

Mr. MARTINEZ. Mr. Chairman, I don't think there is any question.

Mr. LANTOS. Before swearing in the first panel, I would like to express my appreciation to Lisa Phillips of our staff and our chief counsel for the outstanding job they did in the preparation of this hearing. And I would like to indulge in a personal word of praise for a very talented, able, young Republican when we bid fond fare-

well to Christina Tellalian, who is an outstanding minority staff person of this subcommittee.

Christina, I hope you don't mind if I tell everybody that you are getting married later this month and you and your husband will be moving to Chicago.

Christina Tellalian has made a tremendous contribution to the work of this subcommittee during the period she served with us. The majority staff and I personally had the pleasure of working with her.

We all congratulate you, both on your upcoming marriage and on what I'm sure will be a fine professional career.

The first panel consists of Mr. John Stafford, president, American Home Products, who is accompanied by Ms. Margarita Flores, personnel director, Whitehall Laboratories, Puerto Rico, and——

Mr. HOYNES. My name is Hoynes, Louis Hoynes, the senior vice president and general counsel of American Home Products.

Mr. LANTOS [continuing]. And the general counsel of American Home Products.

If you will, please rise and raise your right hands.

[Witnesses sworn.]

Mr. LANTOS. Please be seated.

Gentlemen and Ms. Flores, we are pleased to have you. Your prepared statement will be entered in the record in its entirety. You may proceed any way you choose.

We will begin with you, Mr. Stafford.

Mr. STAFFORD. Thank you, Mr. Chairman. Good morning.

I will be presenting an abbreviated version of my complete statement, although I do ask that the full statement be placed in the record.

Mr. LANTOS. Without objection.

STATEMENT OF JOHN STAFFORD, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, AMERICAN HOME PRODUCTS, ACCOMPANIED BY LOUIS L. HOYNES, JR., SENIOR VICE PRESIDENT AND GENERAL COUNSEL

Mr. STAFFORD. I will be, along with Mrs. Flores, correcting many misstatements that were made last week here and it seems again this morning about our performance under the JTPA program.

I would start with a minor correction which is that the agenda shows my title as president of the corporation. I'm chairman of the board and chief executive officer of the company, and another gentleman is the president.

I do appreciate, Mr. Chairman, your holding this second day of hearings in addition to the day you held last week, because, as you know, I had a conflict with a previously scheduled meeting of our board of directors, and this gives me the opportunity to be here.

As you may know, American Home Products is a diversified manufacturer and marketer of pharmaceuticals and other health care products. Our headquarters is in New York City, but we have facilities throughout the United States. Many of our over-the-counter products, such as Advil, Anacin, Dristan, and Denorex, are manufactured by the Whitehall Division of AHP.

Mr. LANTOS. I don't want to interrupt you, but, if you would like a throat lozenge, I happen to have one. I'm not sure American Home Products makes it, but it works.

Mr. STAFFORD. If it's Robitussin, I'm sure it will work.

Mr. LANTOS. It's Cepacol.

Mr. STAFFORD. That's not ours, but I'm sure it's a good one.

Mr. LANTOS. Does it work?

Mr. STAFFORD. I'm OK now. Just the thought of taking a competitor's product has cleared my throat. [Laughter.]

Mr. LANTOS. I'm glad to see how openminded you are, Mr. Stafford.

Mr. STAFFORD. I am here today at the invitation of the subcommittee to testify and to answer questions about the use of job training partnership funds at the Whitehall facility in Guayama, Puerto Rico. This is a welcome task for me to perform, Mr. Chairman, because we are proud of our record of involvement in the JTPA program. I also want to set the record straight by correcting some of the misstatements that were presented to the subcommittee at the hearing held last week.

With me today, as you have already noted, to help respond to the subcommittee's questions, is Mrs. Margarita Flores, the personnel director of the Whitehall facility in Guayama. I am pleased to have Mrs. Flores here with me today, because she is the individual most knowledgeable about Whitehall's on-the-job training program in Guayama. Therefore, with your permission, it may at times be appropriate for me to refer to her to add some details on that program.

Before moving to Mrs. Flores' presentation, however, I would like to address some broader issues and perhaps clear up some misconceptions about the Whitehall facility in Puerto Rico. Let me begin by saying to you, directly and unequivocally, that we did not move a Whitehall plant from Elkhart, IN, to Guayama, Puerto Rico. The allegation that we decided in 1987 to build a new plant in Guayama, to close the plant in Elkhart and to move Elkhart's jobs to Guayama is simply untrue.

In fact, a Federal judge sitting in the U.S. District Court for the northern district of Indiana just recently concluded and affirmatively ruled, as a finding of fact in a case where this precise issue was litigated, that our decision to close the Elkhart facility was made in September 1990, not in 1987, as has been alleged. I have attached a copy of Judge Miller's decision to my remarks.

Here is, in fact, what happened: In 1986, we decided to build a plant in Guayama as the result of a significant increase, during 1985 and 1986, in the market demand for certain AHP products. We did not have, at that time, adequate production capacity. The two existing production facilities at Elkhart, IN, and Hammonton, NJ, were operating above rated capacity; in fact, they were operating 7 days a week around the clock.

During that time, I received a letter from one of the employees in Hammonton, in particular, asking for less overtime, which is an unusual request. Most importantly, one of AHP's newest and best-selling products, Advil, was being produced on a subcontract basis by an outside firm in the United Kingdom. We wanted to bring that production in-house. For these reasons, AHP decided to build

a new plant, and we began to search for the best location for that plant. This was to be a third plant.

Let me be absolutely clear on one point: At that time, we gave no consideration whatsoever to relocating the Elkhart plant. We had no intention of closing down the Elkhart facility. After the Guayama plant was constructed and opened, the following two developments occurred: In December 1989, we acquired A.H. Robins, a major producer of over-the-counter medications.

As a result of the Robins acquisition, our production capacity was substantially increased. And, in late 1989 and early 1990, the sales of Whitehall's over-the-counter products were significantly less than projected, quite a bit behind the previous year. Because of these factors, our position changed dramatically within the space of 3 or 4 years, from having too little production capacity to having too much.

In late 1989 and early 1990, we were forced to conduct a top-to-bottom review and reevaluation of all of our production facilities. We concluded that a number of facilities should be closed, including two in Canada, one in Puerto Rico, and the Elkhart facility in Indiana. But Elkhart was not moved to Puerto Rico even then.

Ninety-two percent of the production functions of the Elkhart facility were absorbed by the company's existing plants in Hammonton, NJ, and Richmond, VA; approximately 8 percent went to the Guayama facility. But even this transfer of production functions did not result in the transfer of jobs. The existing labor force in Guayama was able to absorb the additional production functions from Elkhart, and, in the end, Elkhart's closing produced no new jobs in Guayama.

These facts are important. AHP decided to build a third Whitehall facility in Guayama in 1986. It decided to close the facility in Elkhart in 1990, over 4 years later. These two decisions were totally independent of each other. The decision to close Elkhart was made after we had completed the JTPA in-house training programs in Guayama.

Another point: Advil was never manufactured at Elkhart, although some packaging was done there. The Guayama plant has been used, as we had always planned to use it, primarily—and still is—primarily to manufacture Advil. Thus, it's simply wrong to contend that the Elkhart facility, its jobs and production facilities were moved to Puerto Rico.

Mr. Chairman, you also inquired about our compliance with the JTPA nonrelocation regulations. I can tell you, unequivocally, that because Elkhart jobs were not moved to Guayama, the JTPA funds that were expended in Guayama were not used to assist in relocating any establishment or in training any substitute employees.

Let me be even more emphatic. In building a plant in Guayama, and in using JTPA funds to help train 78 economically disadvantaged workers to be productive and successful employees in our Guayama plant, we never violated any of the regulations aimed at implementing the nonrelocation prohibition of JTPA.

AHP's decision to build a facility in Cuayama had absolutely nothing to do with the availability of JTPA funds in Puerto Rico. JTPA was not an incentive. We should note, AHP spent approximately $56 million to build the Whitehall facility in Guayama. The

availability of $413,000 in JTPA funding, the amount that was initially approved, or of $217,000, the amount that was ultimately expended to train 78 Whitehall employees, simply would not have been a factor in our decisionmaking process.

I have reviewed, Mr. Chairman, the testimony given before the subcommittee last week and am aware of the charges leveled against AHP of—and I put this in quotes—"unadulterated fraud in connection with the use of JTPA funds in our Guayama facility." Such charges are baseless. We believe that the program did an admirable job of serving the population for which it was intended and brought deserving workers into the employment force.

Let me comment specifically on some of the issues that were raised at last Thursday's hearing. Eligibility: We believe that the individuals trained with JTPA funds in Guayama were from a substantially disadvantaged population and, accordingly, were appropriate participants in this JTPA training program. We must add, however, that the company did not identify these particular individuals. We were given their names by ADT, the agency which administers the program in Puerto Rico, and told that they were eligible to participate.

We do not believe that these employees were not entitled to receive Federal assistance because they were overqualified by virtue of their education. We received approval to hire 166 people from ADT's available work force. We only hired 78 because the pool of ADT applicants did not have the type of experience or education we would otherwise require.

At this point, I would like to note that I have received some more information and would like to make a correction to the statement that I have submitted for the record. In reviewing my written testimony for presentation this morning, I have noted that 3 of the 78 ADT applicants hired in Guayama did have associate degrees from vocational schools in addition to a high school diploma. ADT, who determined these individuals were economically disadvantaged, would have further information regarding these three individuals and the educational backgrounds of other applicants.

The issue of excessive training hours: As Mrs. Flores describes in her statement, the total number of training hours set for in the JTPA contracts was determined by the ADT, not by AHP or Whitehall personnel. By reference to the job descriptions supplied by AHP and to a Federal reference standard, we believe that the training prescribed in our contracts for JTPA funding was fully consistent with the Federal standards.

The question of whether the training occurred: Each and every individual hired by our facility in Guayama was given detailed training in a variety of job functions. The measure of the success of that training is the fact that all of the 78 individuals who were hired and trained with JTPA support in 1988 became permanent employees and that 73 of them are still with the company.

That point, I think, should be emphasized, because I believe you have had testimony that in many programs, most programs, up to 50 percent are gone after 4 months. In our case, over 90 percent of these employees, some 4 years later, are still working as regular, full-time employees with our company. We think that is a remarkable record and would stand up against any program using JTPA

funds anywhere in the country. As Mrs. Flores describes, many of these people have been promoted. This record, rather than being criticized, in my view, should be applauded.

Comparisons to Elkhart training: Our workers in Elkhart, at a plant that had been operating since 1948, received training in many ways.

Mr. LANTOS. If I may interrupt you on that point, because you apparently feel so strongly about it, Mr. Stafford, there are two different interpretations one can place on the statistics you just cited. The first is the one you have placed on them; namely, a remarkably successful use of JTPA funds. The second interpretation, which is equally plausible, is that these people and the company did not need any JTPA involvement whatsoever. These were highly qualified people whom you hired because they were highly qualified; they have done a good job; and they are still with the company.

So I think it's important not to be too self-righteous about the fact that many of these people hired under this program, with government subsidy, are still working for you. It can mean one of two things: It can mean that JTPA has done a very good job, or it can mean that these were qualified, well-educated people, and American Home Products just took the money even though the money was clearly designed to provide training for economically disadvantaged, unqualified people, who then could be brought up to a level of functioning.

So I think it's important, when there are equally logical conclusions to be drawn one way or the other, that we don't merely accept the notion that this is a great success of the JTPA program. This can be the exact opposite. This can be the exact opposite.

Mr. STAFFORD. Could I comment further?

Mr. MARTINEZ. Mr. Chairman.

Mr. LANTOS. I'll be happy to yield to my friend.

Mr. MARTINEZ. You know, it's very easy to justify anything when the law isn't very clear and wasn't written clearly. What you have been able to do is take advantage of the fact that the law wasn't that clear on who is disadvantaged.

I assure you that the JTPA amendments which are now reaching final agreement in conference committee and should be enacted will make it very clear that you will hire somebody with more than one barrier to employment. That way it will be very specifically clear who the disadvantaged is, because it's evident to me that you, in your mind, in justifying your position, have not really determined adequately.

And if you say you received these names—and I understand you received 166 names and decided only to hire 78—are you familiar with the term "creaming"? That's what you did, you creamed. And that's understandable because it's not against the law to do that now. But the intent of the law we were very clear in, and we would have hoped that employers, in realizing that this could do some good for people and it could do some good for the company, would not have practiced creaming that they have done and would have really looked at whether these people were truly disadvantaged or not.

I don't think that is the case, Mr. Chairman, but, as I said before, we have taken care of that in the amendments that no longer will they be able to cream as they have been doing in the past.

Mr. LANTOS. I want to thank my friend for his comment.

Mr. Stafford.

Mr. STAFFORD. If I could just respond briefly before I go on with my statement.

Mr. LANTOS. Please do.

Mr. STAFFORD. I think you may be overlooking the point that I made, which is that these individuals were selected by the local agency as persons who were economically disadvantaged and in need of participation in a program of this type to gain employment.

Mr. LANTOS. Well, Mr. Stafford, you are correct that these people were identified by the local agency. As you will notice as this hearing unfolds, I will be very critical of the local agency, because the local agency equated the concept of being unemployed with being economically disadvantaged, which is an absurd equation, because highly-qualified people in any field may be unemployed, but, using the appalling selection criteria of the local agency, they consider them economically disadvantaged.

By this notion, if your board, in its lack of wisdom, would fire you tomorrow, you would be unemployed, and, using the Puerto Rico agency's criteria, you would be qualified for JTPA programs. Those are the criteria they used. Those were absurd criteria.

As I will point out further, one of the contracts you entered into—and I wanted to raise this later, but since you insist on dealing with this issue now, I'm happy to do so—you entered into an on-the-job training contract for 10 chemist positions, jobs which require a bachelor of science degree in chemistry, a chemist's license, and bilingual capability.

Now, you will testify to me that, in the final analysis, no chemists were hired under this contract; of course not. But the reason why I am critical of your having signed this contract and the agency having signed this contract is, obviously, that people in Puerto Rico with a bachelor's degree in chemistry, with a chemist's license, who are bilingual, are by no means economically disadvantaged. They may be temporarily unemployed—I don't know if there were such people—but that's the point here.

The fact that the agency participated in executing a contract which is contrary to the spirit of the legislation passed by this body exonerates neither the agency nor you. You both share blame. The agency did a lousy job, and you did a lousy job. You entered into contracts that should never have been entered into. You got a quarter million dollars that AHP should never have been given.

You, yourself, said—I fully agree with you—that the JTPA money had nothing to do in your decisions. It's obvious you invested a great deal of money in a new plant. You made the decision on a variety of criteria, and then you discovered that there was a quarter million dollars on the table that AHP could take, and you took it. You took it.

Well, you know, it may not have been illegal. It may not have been illegal, but, at a time when large numbers of people in Puerto Rico desperately needed job training partnership funds to get on the first ladder of jobs, who in fact needed training, they got noth-

ing. And you and the agency entered into a contract for 10 chemists, with a college degree, chemist's license, and bilingual capability. If I could think of a classical abuse of this legislation, I couldn't think of a better example than to have job training partnership moneys used for college degree chemists who are bilingual. Those people, to me, are eminently employable. The last thing they need is job training partnership funds. This is like giving heavily subsidized apartments to very wealthy people. And I suspect you would be as quick as I am in denouncing that practice. Well, this is exactly that same practice in a different arena.

Please proceed.

Mr. MARTINEZ. Mr. Chairman, before we do, will you yield.

Mr. LANTOS. Of course.

Mr. MARTINEZ. On that exact point, you know, in your own testimony, you were given approval to hire 166 people, yet you only hired less than half of those 166. And, in your statement, you say "because the applicants did not have the type of experience or education we would otherwise require."

The point of on-the-job training was to hire those that didn't have the experience and the training to give them the experience and the training. The whole point of the on-the-job training program was to take people who are difficult to train and to keep them, by that subsidy, to the point where they would be trainable and usable, not people that came in with education and experience already necessary to do the job. Now, where they didn't have it already, by your own statement, you indicated that the ones that you didn't select did not have the type of experience or education you would need.

I, again, go to my point which is that it has been a misuse of the funds, whether you try to justify it in any way you can or not. The point that I made earlier is that, as long as we continue to do this, there will continue to be the charges against the program that all it does is cream and that there's no reason to invest this money in people who would already otherwise be employable. And that's the problem.

We have fought too long and too hard to make the program a success to let a few people who have abused it give the opponents of it the ammunition they need to fight it.

Mr. MACHTLEY. Would the gentleman yield?

Mr. MARTINEZ. Yes.

Mr. MACHTLEY. The problem I have with this line of statement and questioning is, frankly, that we are now, I would suggest, perhaps unfairly criticizing a company which has tried to follow the rules which this body has established. If the finger ought to be pointed, it ought to be pointed at us for establishing rules and regulations which are so inappropriate for making sure that the money is funded that in fact a company can follow the rules and do things.

Now, I am looking forward to hearing the rest of the testimony and particularly ADT. But I'm not going to sit here and criticize this company where there has been no evidence that I have heard of fraud, or no evidence of them doing anything that is inappropriate or wrong, merely because the people who we may have wanted to be hired may not in fact have been hired.

So I think that we're getting a little bit far afield of who we should be pointing the finger at and criticizing. And I don't want to, frankly, badger these witnesses who are here on what appears to be poorly drafted rules and regulations.

Mr. MARTINEZ. Mr. Machtley, taking back my time, I understand what you are saying, but I don't think that we are accusing falsely. Of course, you know, we're not accusing violations of the law. The chairman said that early on.

We're not accusing a violation of the law; what we're accusing is a bad use of the program which very clearly, in every debate, in every written report that went with it, that intent was made clear, to hire the very disadvantaged in an on-the-job training those people that were really at a disadvantage because they did not have any experience, because they did not have any education.

And we have made it very clear in the new amendments that now it will be a violation of the law, so we have corrected what we have done. And, quite honestly, I agree with you that maybe we didn't do as good a job as we should have, when we began, making it very clear to people what they should do.

But we had hoped that those people that would have enjoyed the benefit of this program for themselves and for the people they trained would have taken to heart the intent of the law. They didn't. You give people a chance, and, once they do not show that they are worthy of that trust, then you change the law to make sure that they clearly, if they are going to use it, use it in the right way. And that's all we're trying to point out here.

Mr. LANTOS. I want to thank both of my colleagues for their very valuable comments. I would like to add one more thought, because I think it's very important that we deal with these truly significant, generic legislative issues. My colleague from Rhode Island is correct; the legislation was not specific enough. And, as my friend from California indicates, that's why perfecting amendments are now working their way through the Congress.

When the provisions in the legislation are overly specific, Congress is accused of micromanagement. It is one of the favorite phrases in many arenas. So when we merely lay out the general purposes of what we are attempting to achieve, we open up the floodgates for abuse. If we minutely define the specifics of legislation, we are guilty of micromanagement.

What is the solution? Well, the solution is obvious. There has to be—and maybe this sounds naive, but I believe it—an adherence to a social contract by all of us. There has to be a determination on the part of the Congress to spell out, as clearly as possible, in broad outlines, what it attempts to achieve, and there must be good faith implementation of that by the parties concerned.

When there is an attempt by any of the parties to take advantage of what I shall call loopholes, then we have the option of either allowing them to benefit from the loopholes that were unintended or to move in the direction of micromanagement.

If I may take an example from another arena, so American Home Products is not involved, some agriculture legislation over the years—you can debate the wisdom or the stupidity of the legislation—some agriculture legislation was designed to restrict production by paying farmers not to produce. And farmers who in fact did

not produce got payments. There were some farmers who never intended to produce that particular product who nevertheless benefited from that legislation by claiming that they intended to produce the product, which they never did, and by refraining they now got a subsidy.

Now, who is to blame, the authors of the legislation, the agency that administers, or the farmer who unfairly took advantage of a provision that, in his case, was a pure and unintended subsidy? The answer, in my judgment, is all three. And the very self-righteous attitude which maintains, "We didn't find these people; the government labor agency sent them to us. The government labor agency agreed on a contract for us to train college degree chemists with a chemist's license and bilingual capability."

Well, both parties are to blame. The Puerto Rico labor agency is to blame, because it should never have signed such a contract. The U.S. Department of Labor is to blame; it should never have approved such a contract. And, Mr. Stafford, your company, is to blame, because you have enough high-powered lawyers to know that the Job Training Partnership Act was not designed to deal with college degree chemists who are bilingual.

There is plenty of blame to share, and the lily-white approach that all of the guilt is elsewhere, we did everything perfectly, simply will not wash. American Home Products did not need this quarter-million-dollar subsidy; it took it. It took it because it was there. It didn't take it because it needed it, and it didn't take it because the people that it hired were the ones that the legislation intended to target.

The phrase my colleague uses, "creaming," is a very important phrase here. Obviously, as an employer, the initial inclination is to cream the labor market. But there are very responsible employers who go out of their way to hire the handicapped, to in fact institute serious on-the-job training programs, to expand the opportunity that this society provides. Just cynically taking whatever is available does not indicate good corporate citizenship.

A corporation of your size and your profitability should have said—and we will get into that during the questioning period—when you were offered this subsidy, said, "We don't need this subsidy. That's not why we did it. We don't believe in it. We don't believe in it. We think that subsidies should be very carefully targeted in areas where they do some good which otherwise would not unfold. We would have done this anyway. So we don't need that job training money. Give it to somebody where it will do some real good, where it will make the difference between a person being hired or not hired."

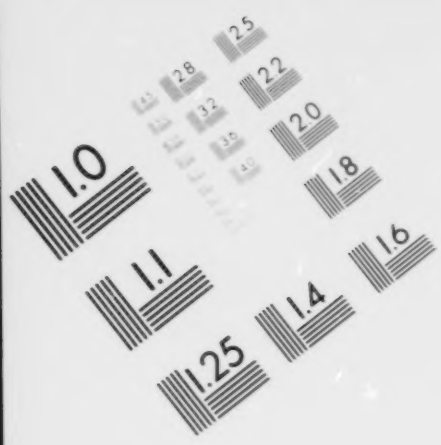
Please proceed, Mr. Stafford.

Mr. STAFFORD. We're being subjected to a long list of criticisms, and I won't go back, although I have notes, and go through them all. But I would like to comment, just for a second, on the philosophy.

Mr. LANTOS. Please.

Mr. STAFFORD. Just briefly, and then I'll go back to my statement without going on to all the specifics.

I do think we complied with the spirit of the law, not just the technical requirements. Clearly, we complied with those. The De-



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1100 Wayne Avenue, Suite 1100
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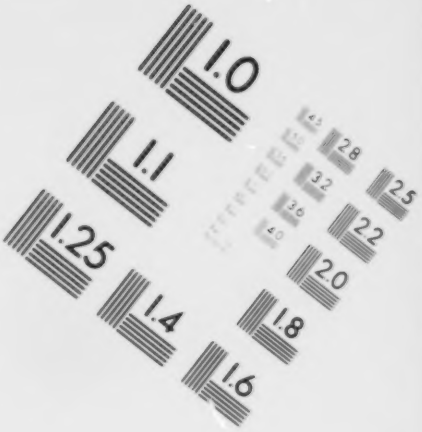

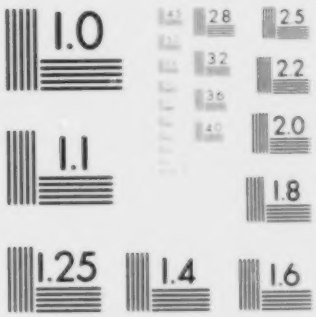

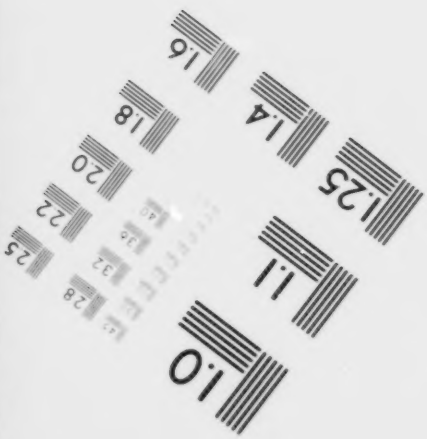

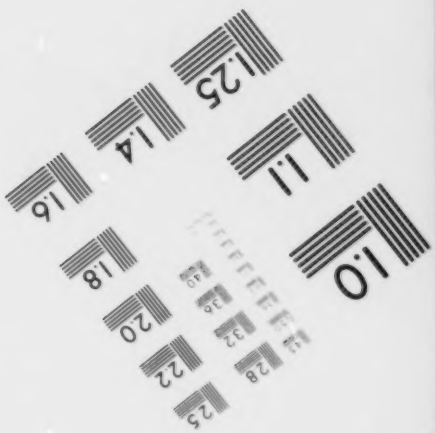

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partment of Labor has conducted an audit, and I think, almost without exception, they found our program has met all of the criteria, and I believe that will be presented to you. But I think we met the spirit of the program here, although of course, I was not personally familiar with this situation when it took place.

Mr. LANTOS. We understand that.

Mr. STAFFORD. But I've had an opportunity to look into it and to spend some time with Mrs. Flores and with our people in Whitehall and with our counsel, who have looked into it carefully as to how we handled it.

When we opened the plant, we were going to hire several hundred people. These were going to be good jobs. They are good jobs, and they're going to continue. And this is in an area of very high unemployment and unemployment among, probably, people who do have degrees. The plant that we took over and refurbished in Puerto Rico had been out of commission for more than 10 years. At the time that it went out of commission, it employed over 3,000 people. Then it stood vacant for a long time. It was a very depressed area.

We came in, and we said, "We can turn that into a pharmaceutical plant." We gutted the building in very rapid time, turned it into a pharmaceutical plant. That was our first operation. Then the second operation, because we had the land and because we had environmental restrictions generally in good shape, came along and said, "We'll build the Whitehall plant. We're going to add more employees." The area is still very depressed, very high area of unemployment.

The agency came to us, and they said, "Well, we know you're going to hire a lot of people," and, absolutely, we would have hired them anyway—"but we have a group of people that we deemed to be economically disadvantaged, and we want you to take those into the on-the-job training program. And the government provides a subsidy to encourage people to do this."

And, in fact, the companies that they encourage to do it are the healthy companies. They are the big, successful, healthy, growing companies. It wouldn't have done any good for Pan Am to use JTPA funds, because they are not in business anymore.

Mr. LANTOS. Could I stop you there for a minute?

Mr. STAFFORD. I just wanted to complete the thought that they came to us, they offered us the opportunity to participate in this program, to take people whom they deemed to be economically disadvantaged. We responded; we said, "Yes, we can take a limited number." We worked on that; we worked through the program. And that is in fact what happened.

Mr. LANTOS. Mr. Stafford, my information is—and correct me if I'm wrong—that, at the point the agency came to you and made this proposal, AHP set as a criteria for referral that these people had to be high school graduates; is that true?

Mrs. FLORES. Yes.

Mr. LANTOS. I can't hear you.

Mr. STAFFORD. I'm told that is true.

Mrs. FLORES. Yes.

Mr. STAFFORD. Yes. Mrs. Flores says it's true.

Mrs. FLORES. That is true. But, in addition——

Mr. LANTOS. Well, that underscores Congressman Martinez' point. That is what creaming is. You can laugh, some in the audience who are too cynical to understand what we are talking about. The fact remains that the program is designed, among others, to take high school dropouts, who are the least likely to get a decent job, to benefit from this training. That immediately established the creaming process. You said,"Everybody who comes into this plant has to be a high school graduate."

I understand that for some occupations in the plant that is necessary. I do not believe, for janitorial purposes, it is necessary for someone to have a high school degree. And the whole point, Mr. Stafford, is not that American Home Products is the sole culprit. The Puerto Rico agency deserves plenty of criticism, and it will get it.

But the notion that you fully implemented the spirit of the legislation is simply not true. The spirit of the legislation would have been implemented had you opened up this training program for people without high school degrees, for people who are handicapped, for the general cross section of the population. Now, I understand it is more easy and more pleasant to work with people who are better educated, more qualified, more capable, but that's not what the legislation is designed to deal with.

Please go ahead.

Mr. STAFFORD. OK. This is a pharmaceutical plant, and almost every procedure, including the cleaning, is required by the FDA to be reduced to a standard operating procedure. These standard operating procedures are in English, and it is necessary that these people have a facility in English when we bring them into the plant.

This is not a company that stamps out metal parts. The cleaning of the plant is, in fact, quite important. If you have had the opportunity to visit a pharmaceutical plant, you know that that is a very important function. It does require some facility——

Mr. LANTOS. I do. But that's what you have to train the people for. You don't take people who need little or no training.

Mr. STAFFORD. Well, we will be——

Mr. MACHTLEY. Would the gentleman yield?

Mr. LANTOS. Be happy to yield.

Mr. MACHTLEY. The great concern that I have about how we're proceeding here with the company is that, if companies out there are now being told, directly or indirectly, that, if you comply with the rules and regulations, if you do what is right—and I've heard no one say that anything has been done wrong by American Home Products, we may not like what was the result, but I haven't heard any facts saying—and I look forward to the Labor Department, if they can correct us and say that there were improprieties specifically done by American Home Products, then I certainly think that we need to take that into consideration.

If we begin to criticize a company because they took the pool and they set the standards, then other companies who are interested in this program—if I am running a company, and I have just heard that American Home Products was criticized because they said, "We're going to comply by the rules," and didn't go beyond, I'm going to say, "I don't want to be part of the program where the

amount of money is so relatively insignificant to their overall operation.

So, from a public policy standpoint, I think we have to be careful in criticizing American Home Products for their compliance with the rules and regulations and saying, "You had an obligation to go beyond the rules and regulations, to go out and find out could you have used a nonhigh school graduate or something else. And I think it's very difficult to criticize them.

We may want to criticize the program for not being specific enough. But, relative to this company, as it sets the standards for other companies, if I were running another company, and someone came to me and said, "Would you take on 70 people out of your work force for JTPA?" and I had just read what American Home Products went through, I, as the CEO, would probably say, "I'm not interested in the program."

That's a danger, and I think we have to be aware that we want these companies to take these people on and, if we make it so difficult for them, the impact could be absolutely disastrous for the very people we're trying to help. So I think we have to be careful.

Ms. DELAURO. Would my colleague yield for 1 second?

Mr. MACHTLEY. Sure.

Mr. LANTOS. Go ahead.

Ms. DELAURO. Mr. Chairman, we're all here, and we're all here for the purpose of trying to make sure that the rules and regulations of the JTPA program are adhered to. We want to make sure that people who need to have the advantage of a job have that job. And we're here to protect workers.

But I have to agree with my colleague from Rhode Island in this sense: If there are errors of judgment in some cases here—it would seem to me that this was a company that was—that people went to them and said, "Here are economically disadvantaged people, do you want to participate in this program and hire people?" that they took that on. I have some questions, and we'll get to them, about whether they did this in other places, in terms of training people.

But here, if we are going to—we seem to be moving down the line here into a moving target, as to whether or not they relocated for some reason that now has proven not to be the case, was this a question of fraud with regard to the use of JTPA funds, and now violating the spirit of the law. And there may be some violations of the spirit of the law here, but I think we're going to get far afield if we so discourage companies from participating in the JTPA program and to try to put people to work.

I don't know what the rest of your work force looks like, what that 66 people out of the—or the 78 people out of the 166 look like. Were they people who came from disadvantaged circumstances and are now hired? Can we take a look at that information to see if, in fact, we have a violation of fraud in the use of these funds, or a violation of the spirit of the law, or less than that.

I don't know what the case here is, but we seem to be—there's a moving target here, Mr. Chairman. I feel it necessary to talk about that and to say it; otherwise, we're going to forever discourage companies to be involved in these kinds of programs. I don't think that we ought to do that.

Mr. LANTOS. I welcome the comments of both of my friends and would like to add an observation. Most major American corporations are convinced that they're doing a perfect job, and the corporate culture is not hospitable to criticism.

When Phillips Petroleum and other major American corporations testified before this subcommittee following a tragic petrochemical explosion which cost the lives of 23 people, they felt terribly self-righteous about how they adhered to all OSHA regulations. Now, at the cost of 23 dead and the untold anguish of those families, we are moving toward better regulations, and Phillips Petroleum, hopefully, will have better OSHA procedures, and maybe 23 people, additional people, will not have to die.

We are living, thank God, in an open society. Congress is open to criticism. If I am to take the views expressed earlier seriously, then we surely must take the position that Congress clearly should not be criticized because criticism of Congress will make, potentially, highly wonderful members of Congress reluctant to run for Congress, because running for Congress means, sooner or later, they will be criticized.

I have to reject that argument. It seems to me that no organization and no individual, beginning with the President of the United States, is above criticism in this society. American Home Products is known in the country as a responsible, high quality, major, successful corporation.

Mr. Stafford, you, as head of that corporation, deserve considerable praise and recognition. And I am personally happy to give it to you, because you deserve it. That does not mean that the corporation or its policies sometimes, in a local situation—and you just pointed out, you obviously didn't know about this—you may not even have known about the program when all this happened. That doesn't mean the corporation is immune to criticism.

American Home Products has a good reputation in the country, and a well-deserved reputation. That does not mean it doesn't make mistakes. Let's not have a degree of sensitivity which is appropriate to a delicate flower but not a multibillion dollar corporation.

I suspect, Mr. Stafford, you would be the first to admit that your corporation makes many mistakes, some of these inadvertently; some of these deliberately. But the notion that American Home Products is to be put on a pedestal because they are a fine company is absurd. We are dealing with the abuse of Job Training Partnership Act funds. American Home Products participated in the abuse of that program, as we have amply demonstrated, and, therefore, it is being criticized. Now, that doesn't detract from lots of achievements of the entity or of the people involved with the entity.

It is a moving target. Mr. Stafford knows far more about American Home Products than I do. And, as the hearing unfolds, new issues emerge. Clearly, one of the issues which has emerged, and I have not yet gotten a satisfactory answer from you, Mr. Stafford, or from Mrs. Flores—I look forward to getting one—maybe we won't get one—how a job training partnership contract can call for 10 bachelor's degree chemists with a chemist's license and bilingual capability to be included in a job training partnership contract.

That, on the face of it, is an absurdity. And I think you would do the company and yourself a lot of good by saying, "Hey, you've got me on that one. We should never have signed the job training partnership contract which is designed to take the economically disadvantaged and train them to get on the job ladder. We should never have included bachelor degree chemists with a chemist's license and bilingual people. That was a mistake, and I admit it."

It would help the company, and it would help your testimony. You know, you are a free person, and you are free to proceed and argue that you have done nothing wrong, absolutely nothing wrong. Every single action of American Home Products in this field—and maybe Puerto Rico will argue that, that they were perfect; they were perfect. It's a free country. You can say anything. It's not convincing.

Anybody who understands what the job training partnership calls for, it is to take the least likely people to get a job, to get them off welfare, put them on the job train, the people who have all these handicaps, who can't hack it, and JTPA gives them a chance to plug in. That's what the act is designed to do, as my good friend from California so well outlined.

If I have a bachelor's degree and a chemist's license and I am bilinguai, I sure as hell don't qualify. And it would be refreshing to say, "Hey, we goofed."

Mr. MARTINEZ. Mr. Chairman.

Mr. LANTOS. Yes.

Mr. MARTINEZ. Let me, just so that everybody clearly understands what the purpose of the act was, let me read from the law itself, on page 66, section 2. "It is the purpose of this Act to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals," and this is the key, "other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment."

Then, in the bill later, on page 108, it really describes what we're talking about in regards to just hiring high school diplomas. And it plugs in title IV of the Social Security Act, which makes a requirement of the people who would be served, and it says of that act, "The eligible school dropouts—" eligible school dropouts—"shall be served on an equitable basis—" equitable basis. I don't see anything equitable about not hiring a single dropout in your program.

Now, we're not talking about here, as both of my colleagues alluded to, a violation of the law, because the law wasn't that clear and that specific. But there were intents in the law, and anybody who read it—and I'm not blaming you. You took advantage of a situation.

And maybe it is more the Department of Labor of Puerto Rico, who in its—and I'm not really casting aspersions on them—but, in their great desire to at least get some people to work in a good-paying job—and I haven't seen that 166 total and what the profile was on all of the 166—but it's evident that, if you only took 78 of the 166 slots that you were approved for, that you definitely didn't like the looks of more than half of those applicants and didn't feel it was worth your time or effort to train them.

But the whole idea of the act was to take, as I said, those people facing serious barriers to employment, meaning those people that had no experience on the job before, those people who really do look like they might be hard to train, because the whole idea of on-the-job training, in that portion of the act, alludes to the fact that the incentive was to employers to take these people that are hard to train and stick with them, and stick with them until the point where they are productive to them.

And that's why the subsidy, because we understand that to train those people to be productive to the point of any benefit to you, you have to stick with them over a period of time.

I don't know if the 78 were that easy to train and then came, in a very short time, to be productive people to benefit you. But that's something that I really would like the Department of Labor to look at, because, after all, they have the ultimate responsibility, not only the Department of Labor in Puerto Rico, but the Department of Labor in Washington, DC.

And I understand, because, as I said before, I've visited Puerto Rico and met with the Department of Labor. They have some very difficult and trying situations there. Believe me, anybody that has the kinds of problems they have would be more than happy to place anybody they could according to your criteria, and your criteria was, as Mrs. Flores has just stated, "Send me only high school graduates." That is not the intent of the law.

I submit to Mr. Machtley, Mr. Lantos, and Ms. DeLauro, that that was not the intent of the law. And I know because I debated that law when I first came to Congress. It was enacted in my first term in Congress. And, subsequently, 2 years later, I became chairman of the Subcommittee on Employment Opportunities, and have been fighting this very same thing all that time, to the point that now, hopefully, with the conference committee coming to an agreement on the amendments that are there now, this will really be cleared up in law so that you understand it.

If the understanding of the intent was not clear enough, which I think it is, then, by the new law, it will clearly understood that you can't cream.

Mr. LANTOS. Thank you very much.

Mr. Stafford, please proceed.

Mr. STAFFORD. Well, I'll go on with the statement. I do appreciate your kind remarks about the company and also about me personally.

Mr. LANTOS. They are very sincerely meant. You deserve a lot of praise.

Mr. STAFFORD. Certainly, we are not perfect; no individual or organization is, and we do make mistakes. However, in this particular instance, we've been characterized as having engaged in fraud, abuse of the act, and creaming. I respectfully disagree with any of those characterizations with respect to the use of the funds. But I will go on with my statement, if I can.

Our workers in Elkhart, at a plant that had been operating since 1948, received training in many ways. After being introduced to the company, new workers were placed side-by-side on production lines with other workers who were long familiar with the machinery and

equipment they were using. They learned on the job, over a period of time, how those lines worked.

They were not considered to have been trained after only 28 days, as was suggested—26, I think, is probably the correct number. This was simply the probationary period under the collective bargaining agreement with OCAW before each new employee became entitled to union benefits. Training continued as the employee continued on the job. Indeed, apprenticeship training for certain jobs, including machine mechanics, could last up to 2 years.

In Guayama, however, we were dealing with a region with chronic unemployment where many new employees had been without jobs for years and where many of those who had been employed had been working in such nonmanufacturing activities as farming. With a new plant and employees new to those jobs, it was necessary for the management of the Guayama plant to develop more detailed standard operating procedures that could be explained to each of the new workers. There were no veterans to work alongside the new employees, providing the sort of guidance provided in Elkhart.

In short, workers in both Guayama and Elkhart received comparable on-the-job training, and the company considered both its Guayama and Elkhart employees to have been well trained, regardless of the manner in which that training took place.

There was also a reference to our use of JTPA funds in Michigan. I understand that the subcommittee heard testimony last week alleging that AHPC attempted to abuse JTPA on-the-job training funds in Mason, MI, in April of this year, and that AHPC was thwarted in that attempt by OCAW. After hearing those charges presented here last week, I inquired into the matter and am pleased to be able to report that those assertions are also unfounded.

The truth is that the local personnel department at our Wyeth-Ayerst plant in Mason was approached in April—they were approached in April—by a JTPA-funded job referral agency with a specific proposal to enroll in the JTPA program those Elkhart workers who had transferred to Mason. The agency represented that it had special approval from the local JTPA governing body for such agencies to enroll the Elkhart workers and to do so on a retroactive basis.

Although the local Mason personnel department instructed the Elkhart workers to fill out the applications, according to the express instructions from the job referral agency, it was because of the concerns expressed by the Wyeth-Ayerst headquarters in Radnor, PA, regarding the proposal that no applications were ever completed or filed. In fact, we directed the agency who came in to give us a written proposal, and they never got back to us. And that was the end of it.

No JTPA funds were ever received. Indeed, for these very reasons, the Lansing Tri-County JTPA governing body, after its own investigation, concluded that no action was warranted as far as Wyeth-Ayerst was concerned.

Mr. Chairman, as I conclude, I'd like to make a personal comment. The success that AHP has enjoyed over the years is due to its extraordinarily skilled, dedicated, and hard-working employees,

numbering almost 50,000 people worldwide. The employees in Elkhart were a productive and valued part of American Home Products' family for many years. The decision to close the facility or terminate one individual is not an easy one. Although we attempt to make those decisions in a fair and compassionate way, the result is never painless.

However, I am proud of AHP and the relationship that it has with its employees. They continue to be our greatest asset, an asset that we value and respect.

Thank you for the opportunity to appear before the committee today. Now, with your consent, I'd like to introduce Mrs. Margarita Flores, personnel director of the Whitehall facility in Guayama, and she will provide some additional information which may respond to some of the points that were made earlier, including the chemists.

[The prepared statement of Mr. Stafford follows:]

STATEMENT OF JOHN R. STAFFORD
CHIEF EXECUTIVE OFFICER
AMERICAN HOME PRODUCTS CORPORATION

SUBCOMMITTEE ON EMPLOYMENT AND HOUSING
OF THE COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

AUGUST 5, 1992

Mr. Chairman:

My name is John R. Stafford. I am appearing today in my capacity as Chairman of the Board and Chief Executive Officer of American Home Products Corporation. As you may know, American Home Products is a diversified manufacturer and marketer of pharmaceuticals and other health care products. Our headquarters is in New York City, but we have facilities throughout the United States. Many of our over-the-counter products -- such as Advil, Anacin, Dristan and Denorex -- are manufactured by the Whitehall Division of AHP.

I am here today at the invitation of the Subcommittee to testify -- and to answer questions -- about the use of Job Training and Partnership Act (JTPA) funds at the Whitehall facility in Guayama, Puerto Rico. This is a welcome task for me to perform, Mr. Chairman, because we are proud of our record of involvement in the JTPA program. I also want to set the record straight by correcting some of the untrue that were presented to the Subcommittee at the hearing held last week.

With me today to help respond to the Subcommittee's questions is Mrs. Margarita Flores, the Personnel Director of the Whitehall facility in Guayama. I am pleased to have Mrs. Flores here with me today because she is the individual most knowledgeable about Whitehall's on-the-job training program in Guayama. Therefore, I will defer to Mrs. Flores on some of the details of that program.

Before moving to Mrs. Flores' presentation, however, I would like to address some broader issues and perhaps clear up some misconceptions about the Whitehall facility in Puerto Rico.

In the final question that you addressed to me in your letter of July 7, 1992, Mr. Chairman, you asked me "[h]ow compliance with JTPA non-relocation regulations was assured in your move from Elkhart, Indiana to Guayama, Puerto Rico." The assumption in that question -- that our opening in Guayama was related to our decision to close a plant in Elkhart -- was presented to the Subcommittee by representatives of OCAW, the union that represented some of the workforce in our Elkhart facility.

Let me begin my response to that question by saying to you -- directly and unequivocally -- that we did not "move" from Elkhart, Indiana to Guayama, Puerto Rico. The allegation that we decided in 1987 to build a new plant in Guayama, to close the plant in Elkhart and to move Elkhart's jobs to Guayama is simply untrue. In fact, a federal judge sitting in the United States District Court for the District of Indiana just recently

concluded -- and affirmatively ruled as a finding of fact in a case where this precise issue was litigated -- that our decision to close the Elkhart facility was made in September 1990, not in 1987 as has been alleged. Mr. Wages and the Union presented to an impartial federal court judge the evidence they purported to have suggesting that we had decided prior to 1990 to close the Elkhart plant and transfer its production to Puerto Rico, and they lost. We are presenting to the Subcommittee a copy of the decision on that issue by Judge Raymond Miller, which I have attached to my remarks.

Here is what in fact happened:

In 1986, we decided to build a plant in Guayama as the result of a significant increase -- during 1985-86 -- in the market demand for certain AHP products. We did not have -- at that time -- adequate production capacity. The two existing production facilities at Elkhart, Indiana and Hammonton, New Jersey were operating above rated capacity. Each was on a three shift, twenty-four hour, seven-day-a-week production schedule. That schedule simply could not continue.

Most importantly, one of AHP's newest and best-selling products, Advil, was being produced on a sub-contract basis by an outside firm in the United Kingdom. We wanted to bring production of Advil in-house.

For these reasons, AHP decided to build a new plant, and we began a search for the best location for that plant. We considered sites in Georgia, Texas, Kansas, Puerto Rico and

Ireland. Let me be absolutely clear on one point: At that time, we gave no consideration whatsoever to relocating the Elkhart plant. We had no intention of closing down the Elkhart facility, nor any need to do so.

We chose Guayama as the site for the new facility for several reasons:

(1) An AHP subsidiary already had an existing production facility in Guayama, and that site was available for expansion;

(2) We had experience with the labor force at that facility in Guayama, and the workers there had shown themselves to be very competent; and finally,

(3) The site offered tax benefits through the application of Section 936 of the Internal Revenue Code and the tax incentive law of Puerto Rico.

AHP filed its application to expand operations in Guayama in June 1987, broke ground that same month, completed construction in August 1988 and began operations in September 1988. Thereafter, the following two developments occurred:

-- In December 1989, we acquired A.H. Robins, a major producer of over-the-counter medications. This acquisition substantially increased AHP's production capacity by adding plants that could be easily integrated into AHP operations. As a result of the Robins acquisition, our production capacity was substantially increased.

-- And in late 1989 and early 1990, the sales of Whitehall's over-the-counter products were significantly less than projected. Demand went down.

Because of these factors, our position changed dramatically within the space of three to four years -- from having too little production capacity to having too much.

In late 1989 and early 1990, we were forced to conduct a top-to-bottom review and re-evaluation of all of our production facilities. We concluded that a number of facilities should be closed, including two in Canada, one in Puerto Rico and the Elkhart facility in Indiana. But Elkhart was not moved to Puerto Rico -- even then. Ninety-two percent (92%) of the production functions of the Elkhart facility were absorbed by the company's existing plants in Hammonton, New Jersey and Richmond, Virginia. Approximately eight percent (8%) went to the Guayama facility. But even this transfer of production functions did not result in the transfer of jobs. The existing labor force in Guayama was able to absorb the additional production functions from Elkhart, and, in the end, Elkhart's closing produced no new jobs in Guayama.

These facts are important:

-- AHP decided to build a third Whitehall facility in Guayama in 1986. It decided to close the facility in Elkhart in 1990, over four years later. These two decisions were totally independent of each other.

-- The decision to close Elkhart was made after we had completed the JTPA in-house training programs at Guayama.

-- Advil was never manufactured at Elkhart.

-- The Guayama plant has been used as we had always planned to use it -- primarily to manufacture Advil.

Thus, it is simply wrong to contend that the Elkhart facility -- its jobs and production functions -- were "moved" to Puerto Rico.

Mr. Chairman, you also inquired about our compliance with the JTPA non-relocation regulations. I believe you are referring to Title 29, United States Code, Section 1551(c)[1/] and the regulations aimed at implementing that prohibition.[2/] Since Elkhart jobs were not "moved" to Guayama, the JTPA funds that were expended in Guayama were not used to assist in "relocating" any "establishment" or in training any substitute

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1/ That provision states, in pertinent part:

> No [JTPA] funds may be used to assist in relocating establishments . . . from one area to another unless the Secretary [of Labor] determines that such relocation will not result in an increase in unemployment in the area of original location . . . .

2/ Section 629.4 of 20 C.F.R. provides, in pertinent part:

> No currently employed worker shall be displaced . . . by any participant [in the JTPA program].
>
> No participant shall be employed or job opening filled when any other individual is on layoff from the same or any substantially equivalent job or when an employer has terminated any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized by this Act.

employees. The JTPA program at Guayama did not, in short, violate the JTPA's non-relocation prohibition.

Let me be even more emphatic: In building a plant in Guayama and in using JTPA funds to help train seventy-eight (78) economically disadvantaged workers to be productive and successful employees at our plant in Guayama, we never violated any of the regulations aimed at implementing the non-relocation prohibition of the JTPA.

AHP's decision to build a facility in Guayama had absolutely nothing to do with the availability of JTPA funds in Puerto Rico. JTPA was not an incentive. Please remember: American Home Products spent approximately $56 million to build the Whitehall facility in Guayama. The availability of $413,000 in JTPA funding, the amount that was initially approved, or of $217,000, the amount that was ultimately expended to train 78 Whitehall employees, simply would not have been a factor in our decision-making process. Indeed, we did not even consider it. In short, we were not in any way "enticed" -- nor were we in any way influenced -- to go to Guayama because of the availability of JTPA funding.

In addition, when our facility finally opened in Guayama, we did not approach the ADT -- the local agency responsible for administering and monitoring the JTPA program in Puerto Rico. That agency came to us. ADT asked us if we would be willing to hire some of their applicants -- whose families were living on incomes under the poverty level -- as part of a JTPA program.

Moreover, the decision to participate in the JTPA program -- a decision which I endorse -- was made by local Whitehall management without consulting AHP management in New York City.

It is my understanding that one of the amendments being considered to strengthen the non-relocation provision of JTPA would require any company that received JTPA funds to "attest" to the fact that none of these funds would be used in violation of the non-relocation provisions of the Act.

Mr. Chairman, even though such an attestation requirement is not yet in the law, let me just say that I would have no problem signing such an attestation today with respect to the JTPA funds used in Guayama. That funding was spent precisely the way the Congress of the United States intended it to be spent -- to provide employment and training services to economically disadvantaged individuals, many of whom had been unemployed for a significant period of time. It was not spent to assist or facilitate the relocation of jobs from one place to another.

I have reviewed, Mr. Chairman, the testimony given before this Subcommittee last week and am aware of the charges leveled against AHP of "unadulterated fraud" in connection with the use of JTPA funds at our Guayama facility. Such charges are baseless. We believe that the program did an admirable job of serving the population for which it was intended and brought deserving workers into the employment force. If our Guayama plant was for some reason the recipient of improper payments -- or if it was paid for services that were for some reason not

rendered -- I would be the first to say that those funds should be returned. Our internal review of the JTPA program in Guayama, however, leads us to believe that this program was remarkably successful.

Let me comment specifically on some of the issues which were raised in last Thursday's hearing:

Eligibility

We believe that the individuals trained with JTPA funds in Guayama were from a substantially disadvantaged population and, accordingly, were appropriate participants in this JTPA training program. We would add, however, that the company did not identify these particular individuals; we were given their names by ADT and told that they were eligible to participate. We do not believe that these employees were not entitled to receive federal assistance because they were overqualified by virtue of their education. We received approval to hire 166 people from ADT's available workforce. We only hired 78, because the pool of ADT applicants did not have the type of experience or education we would otherwise require. Last week, Mr. Chairman, you specifically mentioned the positions available under the contracts for chemists. In fact, no chemists were ever hired under the contracts and no federal money was used to train anyone who had more than a high school education.

Excessive Training Hours

As Mrs. Flores describes in her statement, the total number of training hours set forth in the JTPA contracts was determined

by the ADT, not by AHP or Whitehall personnel, by reference to the job descriptions supplied by AHP and to a federal reference standard. We believe that the training prescribed in our contracts for JTPA funding was fully appropriate with federal standards. Moreover, the training involved was "on-the-job" training. It required the new employees not only to learn the job but to actually perform the job as well.

Whether the Training Occurred

Each and every individual hired by our facility in Guayama was given detailed training in a variety of job functions. The measure of the success of that training is the fact that all of the 78 individuals who were hired and trained with JTPA support in 1988 became permanent employees and that 73 of them are still with the company. As Mrs. Flores describes, many have been promoted. This is a record that, rather than being criticized, should be applauded.

Comparisons to Elkhart Training

Several of the witnesses who testified last week asserted that it was implausible that the Guayama employees received the training for which they were funded because Elkhart employees received no such training. That kind of testimony both misapprehends the nature of our plant and employees in Guayama and sells short the training and experience given to our former Elkhart workers.

Our workers in Elkhart -- at a plant that had been operating since 1948 -- received training in many ways. After being

introduced to the company, new workers were placed side-by-side on production lines with other workers who were long familiar with the machinery and equipment they were using. They learned, on the job over a period of time, how those lines worked. They were not considered to have been trained after only 28 days, as was suggested. Twenty-six days (not 28) was simply the probationary period under the collective bargaining agreement with OCAW before each new employee became entitled to union benefits. Training continued as the employee continued on the job, with the employee perhaps moving from a "B operator" on the production line to an "A operator" or, if he or she wanted to move up to other jobs, such as production or building maintenance mechanic, welder or lift operator, by receiving specific training in those areas. Such training could last, in the case of mechanics, up to two years.

In Guayama, however, we were dealing with a region with chronic unemployment, where many new employees had been without jobs for years, and where many of those who had been employed had been working in such non-manufacturing activities as farming. With a new plant and employees new to those jobs, it was necessary for the management of the Guayama plant to develop more detailed standard operating procedures that could be explained to each of the new workers -- there were no veterans to work alongside the new employees providing the sort of guidance provided in Elkhart.

In specific areas, such as training in CGMP, or Current Good Manufacturing Practices, the testimony received by the Subcommittee last week was simply wrong. When CGMP requirements were introduced in the late 1970's, we required each Elkhart employee -- even those who had 20 or more years on the job -- to undergo a six-step training program with one hour of classroom training per step and to pass a written exam at the conclusion of each phase. That training, which was given to the witnesses who testified last week, was also given to subsequent hires at Elkhart and is the type of CGMP training given in Guayama.

In short, workers in both Guayama and Elkhart received comparable on-the-job training and the company considered both its Guayama and Elkhart employees to have been well trained, regardless of the manner in which that training took place.

Use of JTPA Funds in Michigan

Mr. Chairman, I also understand that your subcommittee heard testimony last week alleging that AHPC attempted to abuse JTPA on-the-job training funds in Mason, Michigan in April of this year and that AHPC was "thwarted" in that attempt by OCAW. After hearing those charges presented here last week, I inquired into the matter and I am pleased to be able to report that those assertions are also unfounded.

The truth is that the local personnel department at our Wyeth-Ayerst plant in Mason was approached in April by a JTPA-funded job referral agency, with a specific proposal to enroll in the JTPA program those Elkhart workers who had transferred to

Mason. The agency represented that it had special approval from the Lansing Tri-County Employment and Training Partnership, the local JTPA governing body for such agencies, to enroll the Elkhart workers and to do so on a retroactive basis. The Mason personnel department instructed the Elkhart workers to fill out the JTPA applications according to the express instructions from the job referral agency. When those instructions raised questions from the workers, our local personnel employees sought advice from Wyeth-Ayerst headquarters in Pennsylvania and were immediately instructed not to pursue any such JTPA applications unless the referral agency substantiated the arrangement in a written proposal. It did not do so and Wyeth-Ayerst considered the proposal to have been canceled. Only after all these events occurred was the Mason facility contacted by the Lansing Tri-County agency about an investigation.

Thus, because of Wyeth-Ayerst's own concerns regarding the proposal, no applications were ever completed or filed. No JTPA funds were ever received. Indeed, for these very reasons, the Lansing Tri-County JTPA governing body, after its own investigation, concluded that no action was warranted as far as Wyeth-Ayerst was concerned.

Mr. Chairman, you are no doubt aware that some of the issues that you have been addressing in your subcommittee's hearings have been the subject of litigation between the Oil, Chemical and Atomic Workers International Union (OCAWIU) and American Home Products. I am pleased to report to you that, last Wednesday,

July 29, 1992, all the parties reached agreement on the terms of a global settlement. This settlement -- which I believe is fair,equitable and in the interests of justice --brings a number of cases to an end. It is my hope that, with this new and just peace, all the parties will be able to put these matters behind us and start the process of re-building the relationship of trust and confidence between labor and management that was -- and will be again -- second to none. I regret that the head of the Union saw fit to present to the Subcommittee the same baseless accusations that were presented to the Court in Indiana and rejected, and these new allegations regarding our Mason, Michigan facility, in a continuing effort to attack our company. I appreciate the opportunity to respond and set the record straight on those issues.

Mr. Chairman, as I conclude, I would like to make a personal comment: The success that American Home Products has enjoyed over the years is due to its extraordinarily skilled, dedicated and hard-working employees, numbering almost 50,000 worldwide. The employees in Elkhart were a productive and valued part of the American Home family for many years. The decision to close a facility, or even terminate one individual, is never an easy one. Although we attempt to make those decisions in a fair and compassionate way, the result is never painless. I am proud of American Home and the relationships it has with its employees. They continue to be our greatest asset -- an asset that we value and respect.

Thank you for the opportunity to appear before you today. With your consent, I would like to introduce Mrs. Margarita Flores, who is the Personnel Director for the Whitehall facility in Guayama. She will tell you about the JTPA program in Guayama in somewhat greater detail.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 7-515, AFL-CIO, and LOCAL 7-838, AFL-CIO,	)	
Plaintiffs	)	
vs.	)	CAUSE NO. S91-50M
AMERICAN HOME PRODUCTS CORP. and WHITEHALL LABORATORIES, INC., d/b/a/ WHITEHALL-ROBBINS,	)	
Defendants	)	

MEMORANDUM AND ORDER

This is an action brought pursuant to the Worker Adjustment and Retraining Notification ("WARN") Act, 29 U.S.C. § 2101 et seq. The cause comes before the court on cross-motions for summary judgment filed by plaintiffs Oil, Chemical and Atomic Workers International Union, Locals 7-515 and 7-838 (collectively, "OCAW"), and defendants American Home Products Corp. and its wholly-owned subsidiary, Whitehall Laboratories, Inc. (collectively "Whitehall"). This court has jurisdiction pursuant to 29 U.S.C. § 2104(a)(5).

The motions require the court to address the showing a plaintiff must make to establish that job separations were part of a plant closing, and to address the sufficiency of a notice given under the WARN Act. For the reasons that follow, the court grants the defendants' summary judgment motion because the plaintiffs have not produced evidence that pre-notice layoffs were part of the

plant closing, and the defendants' notice under the WARN Act was sufficient.

I.

For purposes of the WARN Act, a "plant closing" is a permanent or temporary shutdown of a single site or facility within a single site of employment, if the shutdown results in employment loss for fifty or more employees, excluding part-time employees, during any thirty-day period. 29 U.S.C. § 2101(a)(2). A "mass layoff" is a reduction in force that is not the result of a plant closing, and which results in employment loss during any thirty-day period for at least thirty-three percent of the employees and at least fifty employees, excluding part-time employees, or at least 500 employees, excluding part-time employees. 29 U.S.C. § 2101(a)(3).

An employer must give sixty days' notice before an employment loss is suffered due to a plant closing or a mass layoff. 29 U.S.C. § 2102(a). This notice must go to the employees' representative or to the individual employees if there is no representative, to the state dislocated worker unit, and to the chief elected official of the unit of local government in which the plant is located. 29 U.S.C. § 2102(a). A "representative" is defined as "an exclusive representative of employees within the meaning of section 159(a) or 159(f) of this title or section 152 of Title 45." 29 U.S.C. § 2101(a)(4).

Having painted the WARN Act with broad strokes, Congress directed the Secretary of Labor to devise necessary regulations, including a description of the methods by which employers are to give WARN notices. 29 U.S.C. § 2107(a). The Secretary devised differing requirements for notices to a representative and notices to unrepresented employees. As to representatives, 20 C.F.R. § 639.7(c) provides:

> Notice to each representative of the affected employees is to contain:
>
> (1) The name and address of the employment site where the plant closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information;
>
> (2) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect;
>
> (3) The expected date of the first separation and the anticipated schedule for making separations;
>
> (4) The job titles of positions to be affected and the names of the workers currently holding affected jobs.

Written notice is to be served on the representative's chief elected officer. 20 C.F.R. § 639.6(a). The employer need not give notice to individual employees unless those employees are unrepresented. 54 Fed. Reg. 16058 (April 20, 1989).

Notices to unrepresented employees require different information:

> Notice to each affected employee who does not have a representative is to be written in language understandable to the employees and is to contain:
>
> (1) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect;

> (2) The expected date when the plant closing or mass layoff will commence and the expected date when the individual employee will be separated;
>
> (3) An indication whether or not bumping rights exist;
>
> (4) The name and telephone number of a company official to contact for further information.

The notice may include additional information useful to the employees such as information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

II.

In 1990, Whitehall operated a manufacturing facility in Elkhart, Indiana. The parties agree that Whitehall is an "employer" within the meaning of Section 1(a)(1) of the WARN Act, 29 U.S.C. § 2101(a)(1). At the beginning of the year, more than 775 employees worked at the facility; 505 were production and maintenance workers represented by Local 7-515 and sixty-six were laboratory workers represented by Local 7-838. Whitehall laid off fifty-six employees in February 1990; no WARN notice was given sixty days before those layoffs.

On February 26, 1990, Local 7-515 and Whitehall began collective bargaining negotiations, and specifically negotiated the rights and responsibilities of the parties in the event of a plant closing. They reached an initial agreement that Whitehall would give the union seven months' advance verbal notice of its closing, and that it would give written notice six months in advance of closing. The parties also agreed that Whitehall had exclusive authority to close the plant permanently; this topic appears to

have been Whitehall's sole bargaining issue, and it was presented in an essentially non-negotiable style. By the time the parties reached a final agreement, Whitehall agreed to provide one year written notice of a plant closing, and verbal notice thirty days before the written notice.

Whitehall laid off forty-one more employees in July 1990; no WARN notice was given sixty days before those layoffs.

On October 1, 1990, Whitehall announced that it would close the Elkhart plant sometime between late 1990 and late 1991. Whitehall's announcement included an estimate that a gradual phase-down would begin in late 1990 and the plant would close by late 1991. On October 5, 1990, OCAW International's representative, Stephen Freeman, advised Whitehall to "cease and desist" from contacting the local union regarding the plant closure without the presence of a representative of OCAW International.

On November 1, 1990, Whitehall issued its written notice that the plant would be completely shut down during the last quarter of 1991. Whitehall sent a letter to Local 7-815 Vice President Don Templeton, with a copy to the International, as follows:

> Dear Mr. Templeton:
>
> Due to the phase-out of the manufacturing operations of the Whitehall Laboratories Elkhart, Indiana facility during 1991 the entire Whitehall Laboratories facility located at 1919 Superior Street, Elkhart, Indiana 46516 will be phased out by late 1991. This action is expected to be permanent.

> The phase-out of the manufacturing operation of the facility is expected to commence in early 1991. Anticipated termination of members of Local 7-515 of the Oil, Chemical and Atomic Workers International Union, AFL-CIO is set forth in the attached schedule.
>
> Enclosed is a current list of employees by classification and a tentative schedule showing the number of employees by job groupings to be terminated during each of the four calendar quarters in 1991. Terminations will be subject to bumping rights under the terms of the labor agreement and manufacturing operation adjustments.
>
> If you need any further information with respect to the foregoing, you should contact Mr. Thomas Layman at telephone number 219-294-5651.

A separate letter to Mr. Templeton (with a copy to the International) notified OCAW of the plant closing pursuant to the collective bargaining agreement. Whitehall also sent notice to the mayor of Elkhart and the program director of the Indiana State Dislocated Workers Unit; the adequacy of those notices is not in issue.

On November 16, 1990, Whitehall permanently laid off twenty-five production workers with one week's notice. On December 31, 1990, thirteen office and clerical workers were terminated with sixty days' notice. On January 18, twenty-two workers were laid off on one week's notice. Between December 31, 1990 and January 31, 1991, Whitehall terminated twenty-one salaried employees after giving sixty days' notice.

In February and March of 1991, Whitehall recalled some of the employees terminated in November and January. On April 5, 1991, Whitehall permanently laid off seventy-one production workers with one week's notice, including all those recalled in February and March. On May 24, 1991, Whitehall announced the layoff of thirteen laboratory workers with one week's notice.

The Elkhart Whitehall plant ceased operation on November 1, 1991.

III.

OCAW contends that each of the layoffs recited above was in anticipation of, and thus a part of, the closing of the Elkhart plant. The 1990 layoffs (February, July, and November) were not preceded by the sixty days' notice required under the WARN Act. OCAW further contends that the November 1 written notice was deficient in several respects, making all 1991 layoffs violative of the WARN Act. OCAW seeks back pay and other lost compensation for the sixty day period in which each employee would have been able to anticipate the loss of employment had Whitehall complied with the WARN Act, less any wages or benefits actually paid to such employees during the sixty day periods. 29 U.S.C. § 2104(a)(1), (2). OCAW also seeks the costs and legal fees incurred in bringing this action. 29 U.S.C. § 2104(4)(6).

Whitehall denies that the 1990 layoffs were part of the plant closing; it contends that those layoffs resulted from reductions in production needs. Whitehall also contends that the November 1 notice was sufficient under the regulations promulgated under the WARN Act. If the notice was insufficient in any respect, Whitehall claims entitlement to the "good faith defense" provided by 29 U.S.C. § 2104(a)(4).

The parties' arguments will be categorized into those pertinent to the pre-notice layoffs, the November 1990 layoffs, and the 1991 layoffs.

A.

OCAW argues that Whitehall violated the WARN Act by failing to provide sixty days' notices with respect to the layoffs in February and July 1990 of fifty-six and forty-one employees, respectively. The WARN Act requires notice with respect to two types of events. Notice must be given of a "plant closing", which means the shutdown of a single site or facility if the shutdown causes an employment loss for fifty or more full-time employees during any thirty-day period. 29 U.S.C. § 2101(a)(2). Notice also must be given in the event of a "mass layoff", which is defined as a reduction in force that is not the result of a plant closing and results in an employment loss at a single site during any thirty-day period for either 500 or more full-time employees, or at least fifty full-time employees comprising at least a third of the full-time employees. 29 U.S.C. § 2101(a)(3).

The February and July layoffs cannot constitute a "mass layoff". The layoffs involved fewer than 500 employees and less than a third of the Whitehall work force. Therefore, if notice was required to be given, the layoffs must be shown to have been part of the plant closing. OCAW would bear the burden of so proving at trial. OCAW would not have to prove that Whitehall shut down the

plant in February or July; regulations promulgated under the WARN Act contemplate that a closing may be accomplished in phases.[1]

Whitehall claims that the February and July layoffs were not part of the plant closing, but rather were caused by decreases in production needs. Whitehall submits the affidavit of plant manager Donald Boveri in support of that contention. OCAW concedes that, despite the opportunity granted pursuant to Fed. R. Civ. P. 56(f), it has no testimonial evidence to contradict Mr. Boveri's testimony that the February and July layoffs were based on production needs, but OCAW points to various documents and circumstances that it contends establish the existence of a genuine fact issue.

Whitehall attacks Mr. Boveri's affidavit by demonstrating a poverty of information upon which his assertions were based and by showing that Mr. Boveri was not involved in the layoff decisions. Whitehall also submits the findings of a National Labor Relations Board administrative law judge rejecting Whitehall's assertion that another set of layoffs (the November layoffs) were based on production needs; the ALJ found that those layoffs were based on anti-union animus.

OCAW cannot, however, foreclose summary judgment simply by asserting Mr. Boveri's lack of credibility. Trans-Air Informa-

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[1] When all employees are not terminated on the same date, the date of the first individual termination within the statutory 30-day or 90-day period triggers the 60-day notice requirement. . . . The first and each subsequent group of terminees are entitled to a full 60 days' notice.

20 C.F.R. § 639.5(a)(2).

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tional, Inc. v. Northern Adhesive Co., Inc., 882 F.2d 1254, 1257 (7th Cir. 1989); Walter v. Fiorenzo, 840 F.2d 427, 434 (7th Cir. 1988). Because Whitehall would bear the burden at trial of demonstrating that the February and July layoffs were part of the plant closing, it must come forth with evidence to show what facts are in actual dispute. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). If it fails to do so, summary judgment is proper. Fitzpatrick v. Catholic Bishop of Chicago, 916 F.2d 1254, 1256 (7th Cir. 1990).

A genuine factual issue exists only when there is sufficient evidence for a jury to return a verdict for the motion's opponent. Harbor House Condominium Ass'n v. Massachusetts Bay Ins. Co., 915 F.2d 316, 320 (7th Cir. 1990). Summary judgment should be granted if no reasonable jury could return a verdict for the motion's opponent. Brownell v. Figel, 950 F.2d 1285, 1289 (7th Cir. 1991). Whitehall could not satisfy this burden at trial simply by convincing a jury that Mr. Boveri is not a credible witness.

Similarly, OCAW seeks to dismiss the deposition testimony of Whitehall officials as self-serving, but such descriptions do not contribute to the meeting of OCAW's burden to show a triable fact issue.

Materials presented by OCAW indicate that American Home Products officials began discussing the Elkhart plant's closure as early as November 1989. Discussions and planning continued from that point until the final decision was reached on September 5, 1990, when the chairman of the board approved the proposal. Time-

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tables were developed; consolidation plans were discussed with corporate management as early as March 1990; funds were appropriated. Whitehall Senior Vice-President Charles Slacik testified that by June 1990 Whitehall "had implemented a number of steps to occasion [the shutdown] to happen." Mr. Slacik also testified repeatedly that the final approval was not given until September, and that without that approval the closure plan could not proceed; he did not testify that reductions in force were among the steps Whitehall had implemented toward the shutdown.

The affidavit of Local 7-515 President Connie Malloy states that in January 1990 Joe Bock, American Home Products' Vice-President of Industrial Relations, told her and the president of Local 7-838 that Whitehall was considering closing the plant, and that if the union cooperated in negotiations concerning a health insurance plan, Mr. Bock would personally take an active role in looking out for the unions' interests. Further, Ms. Malloy states, during negotiations in early 1990, Whitehall proposed to eliminate a provision in the collective bargaining agreement that prohibited shutdown during the term of the contract, and insert a provision which would require one year's notice of a plant closing.

From these circumstances, OCAW argues that an inference may be drawn that the February and July layoffs were part of a continuing march toward the plant closing. At the summary judgment stage, the court must construe the facts as favorably to the non-moving party as the record will permit, Brennan v. Daley, 929 F.2d 346, 348 (7th Cir. 1991), and draw any permissible inferences from

the materials before it in favor of the non-moving party, Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986), but only to the extent the inferences are reasonable. Bank Leumi Le-Israel, B.M. v. Lee, 928 F.2d 232, 236 (7th Cir. 1991). The inference pressed by OCAW is not sufficiently reasonable to allow a trier of fact to find that the February and July layoffs were part of the plant closing. Mere planning and consideration, before a decision is made, does not support a reasonable inference that all layoffs accomplished during the planning stage were part of a closing plan not yet authorized. Such a conclusion would find basis only in speculation and conjecture, and a motion for directed verdict (or judgment as a matter of law under today's Rules of Civil Procedure) properly is granted against a party who relies only on speculation and conjecture. Garrett v. Barnes, No. 91-1505, slip op. at 6 (7th Cir. Apr. 8, 1992) (quoting McClure v. Owinski, 686 F.2d 541, 544 (7th Cir. 1982)).

OCAW has been unable to demonstrate the existence of a genuine factual dispute as to whether the February and July layoffs were part of the plant closing. Whitehall is entitled to summary judgment on the WARN Act claims concerning those layoffs.

B.

Whitehall also contends that the November 1990 layoffs were ordered due to production needs unrelated to the planned plant closing; OCAW points to essentially the same evidence in support of its contention that the layoffs were part of the plant closing. Because the November layoffs were implemented after the approval

and announcement of the closure plan, the court agrees with OCAW that a reasonable trier of fact could infer that the November layoffs were part of the plan and, hence, part of the plant closing. As noted above, the court must draw all reasonable inferences in favor of OCAW for purposes of Whitehall's summary judgment motion; accordingly, the court accepts, for purposes of this motion, that the November layoffs were part of the plant closing.

The WARN Act requires sixty days' notice before any job separation; the November layoffs occurred barely two weeks after notice of the intended closing. Nevertheless, Whitehall is entitled to judgment as a matter of law with respect to any WARN Act violation arising from the November layoffs, because no employee laid off suffered an injury compensable under the WARN Act.

The Act provides a remedy for "each aggrieved employee who suffers an employment loss as a result of such closing or layoff". 29 U.S.C. § 2104(a)(1). The persons laid off in November 1990 were "aggrieved employees", because they did not receive the notice to which they were entitled. 29 U.S.C. § 2104(a)(7). Each such employee was recalled to work in February or March, 1991. Because their layoffs did not exceed six months, those laid off in November 1990, however, suffered no "employment loss". 29 U.S.C. § 2101(a)(6)(B) ("the term 'employment loss' means . . . a layoff exceeding 6 months").

OCAW objects to this reasoning, noting that all those laid off in November and recalled in February and March were laid off for a final time in April. OCAW contends that the recalls were

nothing more than a way to get around the WARN Act. They point to an exhibit to the Slacik deposition, which lists one of the reasons for the recalls as "Established 'temporary layoff' status for W.A.R.N. suit."[1] OCAW argues that Whitehall should not be able to get around the Act's requirements so easily.

Congress did not draft the WARN Act so as to make any employer's stumble an irrevocable fall. Nothing in the Act or accompanying regulations forbids an employer that prematurely terminated employees from recalling those employees to assure their receipt of sufficient notice. Bringing someone back to work so as to comply with the WARN Act is not evasion of the Act; it is compliance. A different result might be appropriate if employees were recalled for only a day, but each of the employees laid off in November returned to work for at least thirty days.

If the November 1 notice was sufficient -- a matter addressed below -- those laid off in November received sixty days' notice of the plant closing before their "employment loss" commenced in April. Because those laid off in November did not suffer any employment loss, their layoffs establish no right to a remedy under the WARN Act. No factual disputes affect that conclusion; hence, the remaining factual disputes are immaterial and do not foreclose summary judgment. Johnson v. Palker, 891 F.2d 136, 138 (7th Cir. 1989). Whitehall is entitled to summary judgment on this WARN Act claim.

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[1] This suit was filed on February 7, 1991.

c.

All layoffs and job separations in 1991 occurred more than sixty days after the November 1 notice. Accordingly, if the November 1 notice was adequate, those job separations cannot be held to have violated the WARN Act. OCAW contends that the November 1 notice was deficient in five different ways.

1.

Whitehall addressed the November 1 notice to the vice-president of Local 7-515, Don Templeton, rather than to the local's president, Connie Malloy.[1] OCAW accurately notes that Whitehall was required to serve the notice upon Ms. Malloy. 20 C.F.R. § 639.6(a). Regardless of the person to whom the notice was addressed, however, undisputed evidence in the record establishes that Ms. Malloy also was given a copy of the notice on November 1. Indeed, Whitehall's conduct with respect to Ms. Malloy's comments that day led to the National Labor Relations Board findings discussed above.

Any reasonable method of delivery of the notice is sufficient under 20 C.F.R. § 639.8. Ms. Malloy received the notice. Whitehall is entitled to judgment as a matter of law on this claim.

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[1] Ms. Malloy was on layoff status with Whitehall on November 1, 1990. Whitehall apparently addressed the notice to the highest-ranking union official not on layoff status.

2.

The November 1 notice provided that terminated employees would be subject to recall due to manufacturing adjustments. OCAW contends that this provision rendered the WARN notice illusory, because affected employees could not determine when their employment opportunities with Whitehall finally would come to a close. Accordingly, OCAW argues, employees could not receive the transition time that the WARN Act was intended to provide:

> Purpose of WARN. The [WARN Act] provides protection to workers, their families and communities by requiring employers to provide notification 60 calendar days in advance of plant closings and mass layoffs. Advance notice provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market.

20 C.F.R. § 639.1. Thus, for example, when Whitehall laid off twenty-two employees in January 1991, OCAW contends those employees were "in limbo" due to the possibility of recall.

Whitehall raises two arguments that, for reasons discussed below, the court cannot rely upon at the summary judgment stage. First, it contends that the collective bargaining agreement left it with no alternative other than layoff subject to recall; the collective bargaining agreement contained no provision for terminations. Second, it maintains that placing the employees on layoff status subject to recall worked to the advantage of the affected employees, who retained their health benefits for four months while on layoff, continued to accrue seniority rights, and retained a guaranteed right of recall.

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OCAW declined to agree with the proposition that the collective bargaining agreement provided no alternative, and the collective bargaining agreement does not appear to be in the record before the court. In any event, OCAW is correct that the collective bargaining agreement could not trump the WARN Act: if the WARN Act requires out-and-out terminations, layoffs subject to recall would be impermissible. As to the second point, OCAW notes that the benefits were not afforded employees until OCAW filed a grievance; again, however, the collective bargaining agreement cannot preempt the WARN Act.

Nonetheless, the court finds nothing in the Act or the regulations that forbids an employer from laying off employees subject to recall after issuing a WARN Act notice. The right of recall may be the employer's obligation, but it is the employee's right and opportunity. The court is not persuaded that Congress intended to strip employees of that right and opportunity by requiring that all post-announcement job severances be permanent.

OCAW argues that, as a practical matter, the possibility of recall to high-paying Whitehall jobs precluded progress to the "transition time" following layoffs. In the final analysis, however, the choice -- to the extent the prevailing local economy allowed a choice -- remained with the laid-off employee. That employee could seek or accept other employment (if available) or retraining, or could await recall. The court does not believe that the WARN Act was intended to foreclose that choice if circum-

stances, or a collective bargaining agreement, permitted the employee to have such a choice.

Whitehall is entitled to judgment as a matter of law on this claim.

3.

The November 1 notice stated that terminations would be subject to "bumping rights". OCAW maintains that this information was too limited to allow it or affected employees to ascertain which employees would be terminated at any given time. Explanation of the complicated "cross bumping" system in effect under the collective bargaining agreement is required.

The collective bargaining agreement's bumping procedure allowed employees to use their seniority to bump other employees in the same or lower pay grade, and also allowed "cross bumping" into another job group by a qualified employee. To be eligible for "cross bumping", however, an employee must have signed a paper with Whitehall's personnel department. In practice, however, such requests were not made until an employee was faced with layoff from the plant, and an employee who sought to "cross bump" could wait until the date of the layoff to sign the paper with the personnel department.

A list of affected employees, together with their seniority dates, accompanied the November 1 notice. Accordingly, OCAW could determine bumping rights within a job group, but because OCAW did not have information concerning the "cross bumping" papers in Whitehall's personnel department, OCAW could not evaluate the

effect of "cross bumping" rights between job groups. OCAW maintains that the failure to provide such information with the November 1 notice renders the notice ineffective under the WARN Act.

As noted above, the Act contains no requirements for the content of a notice: Congress referred the task of developing such requirements to the Secretary of Labor. Accordingly, the regulations must provide the informational rights asserted by OCAW for the claim to survive. The court can find no such informational right.

As a preliminary matter, it does not appear to the court that the regulations create any obligation for the employer to provide a representative with any information concerning bumping rights. 20 C.F.R. § 639.7(d) requires that an unrepresented employee be given "[a]n indication whether or not bumping rights exist", but § 639.7(c), which governs the content of notice to a representative, contains no such requirement. Nevertheless, because this is a ground not raised by any party,[1] the court does not rely upon it. See Edwards v. Honeywell, Inc., No. 91-2027 (7th Cir. Apr. 3, 1992).

Assuming that an employer must provide a representative with information about bumping rights, the court can find no basis for holding that a failure to give all pertinent information

[1] The court raised the issue at the hearing on the motion, and OCAW's counsel stated a belief that such a requirement is to be found elsewhere in the regulations. Understandably, since this was not an issue raised before the hearing, counsel could not identify that regulation.

constitutes a WARN Act violation. As noted above, 20 C.F.R. § 639.7(d) requires only that unrepresented employees be told whether bumping rights exist; no provision requires the employer to detail those rights. 20 C.F.R. § 639.6(b) says notice should be given to employees likely to lose their jobs as others exercise their bumping rights, but only to the extent such workers can be identified when the notice is given; if they cannot be identified, notice to the incumbents suffices.

This is not an instance in which an employer refused to provide necessary information upon the representative's request, making it impossible for the representative to advise employees. A different result might be warranted under such circumstances. Whitehall's November 1 notice, however, offered to provide additional information upon request, and nothing in the record before the court suggests that such a request was made.

Whitehall is entitled to judgment as a matter of law on this claim.

4.

OCAW next argues that the November 1 notice contained inadequate job title listings. 20 C.F.R. § 639.7(c)(4) requires notice to a representative to contain, "The job titles of positions to be affected and the names of the workers currently holding affected jobs." OCAW contends that the job title listings failed in two particulars.

First, OCAW notes that while Whitehall admitted to having 507 employees at the beginning of 1990, the November 1 notice

listed only about 400 employees. Accordingly, OCAW reasons, the listing must have been incomplete. This argument has no merit; the record supports Whitehall's explanation that the principal listing contained the names of OCAW members who were actively employed, and a separate listing was provided of those on layoff status. By November 1, the number of actively employed OCAW members had dropped from 507 at the beginning of 1990 to the approximately 400 listed in the notice. As noted above, OCAW challenges the layoffs of ninety-seven such employees in February and July.

Second, the listing specified employees specifically by job classification. The schedule of separations attached to the notice referred to job groupings. At Whitehall, a job grouping consisted of several job classifications. Accordingly, OCAW argues, it was impossible for OCAW to determine the schedule for termination of job classifications.

A review of the notice and its attachments leads the court to conclude that the extensive listings in those attachments comply with the WARN Act and the regulations. While the use of uniform terminology would have been helpful, the combination in this notice was not so indecipherable as to amount to a violation of the WARN Act or its regulations. Again, the court notes the notice's offer of additional information upon request and the absence of any indication in this record of such a request.

Whitehall is entitled to judgment as a matter of law on this claim.

5.

Finally, OCAW contends that the November 1 notice failed to specify the expected separation dates. Whitehall contends that the notice was sufficient, but argues alternatively that if the notice was insufficient, it is entitled to the "good faith" defense provided by 29 U.S.C. § 2104(a)(4). The court agrees with OCAW's principal argument, but also agrees with Whitehall's alternative argument.

a.

The November 1 notice provided a schedule for the separation of OCAW members by job groupings, with the projected number of employees in each job grouping to be laid off in each of the quarters of 1991. Whitehall contends that this notice satisfies the WARN Act. The court disagrees. 20 C.F.R. § 639.7(c)(3) requires the employer to notify the representative of the "expected date of the first separation and the anticipated schedule for making separations". 20 C.F.R. § 639.7(b) provides:

> As used in this section, the term "date" refers to a specific date or to a 14-day period which a separation or separations are expected to occur. If separations are planned according to a schedule, the schedule should indicate the specific dates on which or the beginning date of each 14-day period during which any separations are expected to occur. Where a 14-day period is used, notice must be given at least 60 days in advance of the first day of the period.

The court agrees with OCAW that these provisions entitle a worker, through his or her representative, to two things: (i) identification of, at most, the fourteen-day period in which the employee will be separated from the employer, and (ii) notice of

the separation at least sixty days before that fourteen-day period begins. Whitehall provided the latter, but not the former. The most a worker could glean from the November 1 notice was that his or her job would be terminated sometime within an identifiable ninety-day period.

20 C.F.R. § 639.7(b) only requires an employer to provide the best information available to it when the notice is given, and Whitehall contends that it provided its best information. Because the collective bargaining agreement required that notice of the plant closing be given a year in advance, as distinct from the sixty days required by the WARN Act, the November 1 notice necessarily was drafted with greater uncertainty than the usual WARN notice. The court accepts the logic behind the proposition that it is more difficult to assign a specific date to a layoff expected to occur in nine months than one sure to occur within a few weeks.

The regulations, however, do not require a worker to swap knowledge of his or her separation date (or separation fortnight) for greater foreknowledge that the worksite will be closed. One who wishes to keep a higher-paying job at the closing plant before beginning a lower-paying job, but who also wishes to avoid an intervening period of unemployment, needs to know when his or her job will end, so a starting date at the person's next job can be selected; the regulations require that the worker be given that information.

Accordingly, an employer with insufficient information to comply with § 639.7(b) and (c)(3) at the time notice is given

must give the best information it has, § 639.7(a)(4), and then provide further notice to workers at least sixty days before their separation, setting forth the date on (or fourteen-day window in) which the separation will occur. 20 C.F.R. § 639.7(a)(2); UAW v. Shadyside Stamping Corp., 6 I.E.R. Cases 1640, 1648-1646 (S.D. Ohio), aff'd in unpublished op., 6 I.E.R. Cases 1648 (6th Cir. 1991). Whitehall did the first; it did not do the second. Instead, workers were provided with seven days' notice of their actual separation date. That notice was insufficient to satisfy Whitehall's obligation under the Act and the regulations.

b.

Section 4(a)(4) of the WARN Act provides that if an employer proves to the court's satisfaction that its violation of the WARN Act was in good faith and that the employer had reasonable grounds for believing its conduct was not a violation, the court has discretion to reduce the amount of the liability or penalty provided by the WARN Act. 29 U.S.C. § 2104(a)(4). Whitehall contends that if it is found to have violated the WARN Act, as the court just found, it is entitled to the benefit of this provision. The court agrees.

The court is hesitant to rule on an issue of good faith at the summary judgment stage. Good faith is a variant of intent, and summary judgment on issues of intent is rare, but not wholly non-existent. See, e.g., Holland v. Jefferson Nat'l Life Ins. Co., 883 F.2d 1307 (7th Cir. 1989); McMillian v. Svetanoff, 878 F.2d 186 (7th Cir. 1989); Corrugated Paper Products, Inc. v. Longview Fibre

Co., 868 F.2d 908, 914 (7th Cir. 1989). Whitehall cites UAW v. Shadyside Stamping Corp., 6 I.E.R. Cases at 1646-1648, as authority for the proposition that summary judgment may be appropriate on issues under Section 4(a)(4) of the WARN Act. Although the court recognizes that it is not bound by opinions of other district courts, see Colby v. J.C. Penney Co., 811 F.2d 1119 (7th Cir. 1987), the court finds the reasoning of the Shadyside Stamping court persuasive. A Section 4(a)(4) defense may be considered at the summary judgment stage in an appropriate case.

This is such a case. OCAW points to evidence of bad faith or hard feelings on Whitehall's part, and argues that such evidence precludes a finding of good faith. Under Section 4(a)(4), however, the court must focus on Whitehall's efforts to comply with the WARN Act, not upon conduct unrelated to the notice required by that Act. The record before the court demonstrates that Whitehall did nothing to attempt to skirt its obligations under the WARN Act.

The possibility of the plant's closing was made known to OCAW officials in February 1990. Indeed, OCAW may have known of the possibility before higher-ups at Whitehall's corporate parent; Mr. Slacik's deposition testimony indicates that the possibility was first presented to corporate management in March 1990. Verbal notice of the closing decision was given within weeks of its final approval. The closing of the plant was announced a year in advance, and some workers learned of the quarter in which they would lose their jobs much more than sixty days in advance. Workers laid off too soon were rehired to avoid violation of the Act. Failure

to have done some of these things would have violated the collective bargaining agreement, but the collective bargaining agreement was agreed upon well after the WARN Act went into effect. The WARN Act was enacted to let employees know if their worksite was going to be closed; there simply was no secret in 1991 that the Elkhart Whitehall plant would close near the end of the year.

In addition to good faith, an employer also must demonstrate that it had reasonable grounds for believing that its conduct was not a WARN Act violation. Jones v. Kayser-Roth Hosiery, Inc., 748 F. Supp. 1276, 1291 (E.D. Tenn. 1990). This case differs from Shadyside Stamping, in which some notice was given before the WARN Act took effect and other notice was given before the regulations had been finalized. It also differs, however, from Kayser-Roth Hosiery, in which the regulations were clear. The requirement of repeated notices is not found in any single place in the regulations: § 639.7(c) tells the employer it must notify a representative of the expected date of the first separation, but need only present an anticipated schedule of later separations (in contrast to § 639.7(d), which requires that an unrepresented worker be told the expected date when he or she will be separated); § 639.7(b) sets forth the worker's right to know the date or fortnight of separation; § 639.7(a)(4) tells the employer it need only include the best information available at the time of the notice, but § 639.7(a)(2) says that if more information becomes available after

early notice has been given, the employer should issue a further notice containing any further required information.[3]

More important than the maze through which the employer must run, however, is that the obligation is unclear even at the finish line. Section 639.7(a)(2), which contains the only regulatory requirement of successive notification, applies only to "the required elements set out in this section"; section 639.7(b), which addresses the specificity of notice of the date of separation, says that, "If separations are planned according to a schedule, the schedule should indicate . . . ." In light of the use of the non-mandatory "should", a reasonable person reading these two regulations could conclude that while successive notifications must be given for information required to be given, specific dates or fortnights are not required to be given if separations are planned according to a schedule.

This court's reading differs, as did the Shadyside Stamping court's reading. Nonetheless, the Act is silent on successive notification, and the regulations are ambiguous. Accordingly, the court concludes that Whitehall has demonstrated its entitlement to the defense provided by Section 4(a)(4) of the WARN Act.

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[3] At argument on these motions, counsel for OCAW argued that the filing of this suit put Whitehall on notice about this insufficiency, precluding any reasonable basis for believing its conduct sufficient. The complaint filed on February 7, 1991 did not, however, refer to the fourteen-day window requirement of § 639.7(b). Indeed, it alleged that Whitehall only told employees that they might be let go any time in 1991, and cited only 20 C.F.R. § 639.7. It would not have been unreasonable for Whitehall to have read the initial complaint, recognized the error in the factual allegation, and not to have identified the path through § 639.7 through which OCAW has led the court.

c.

The combination of the lack of specific separation dates in Whitehall's November 1 notice and Whitehall's failure to provide subsequent notice of separation dates at least sixty days before separation violated 20 C.F.R. § 639.7. Whitehall has, however, demonstrated its entitlement to the "good faith" defense provided by 29 U.S.C. § 2104(a)(4). Accordingly, Whitehall is entitled to judgment as a matter of law on this claim.

IV.

For the foregoing reasons, the court now DENIES the plaintiffs' motion for partial summary judgment and GRANTS the defendants' motion for summary judgment. Judgment shall be entered for the defendants.

SO ORDERED.

ENTERED: April 24, 1997

Robert L. Miller, Jr., Judge
United States District Court

COPY TO:

Balanoff
Wilhoite
Kus
Order Book

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

NORTHERN DISTRICT OF INDIANA

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 7-515, AFL-CIO, and LOCAL 4-838, AFL-CIO,
Plaintiffs
V.
AMERICAN HOME PRODUCTS CORP., and WHITEHALL LABORATORIES, INC., d/b/a WHITEHALL-ROBBINS,
Defendants

JUDGMENT IN A CIVIL CASE

CASE NUMBER: S 91 - 50 M

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that defendant is entitled to judgment as a matter of law and judgment is entered in favor of defendant and against plaintiff.

This document entered pursuant to Rules 79(A) and 58 of the Federal Rules of Civil Procedure on:

April 17, 1992
Date

GERALDINE J. CROCKETT
Clerk

(By) Deputy Clerk

Mr. MARTINEZ [presiding]. Thank you, Mr. Stafford. Just before we go to Mrs. Flores, let me say that I have visited Puerto Rico, as I said before, a number of times, and understand the great dilemma they have with the high unemployment rate and the high dropout rate. I have always been anxious to help them with their problem. The last time I was there, it was on the Head Start program, which we have made some amendments to improve.

But I have developed a special affinity for Puerto Rico, maybe because of my Hispanic heritage, and sometimes I feel that, even though I'm an American of Mexican descent, I'm a little bit Puerto Rican, too. The fact is that the one thing that a lot of people don't understand is that these are Americans. And at least, if you had to move someplace, American are still working.

Mrs. Flores, we will be glad to take your testimony now.

STATEMENT OF MARGARITA FLORES, PERSONNEL DIRECTOR, WHITEHALL LABORATORIES, PUERTO RICO

Mrs. FLORES. Mr. Chairman and members of the subcommittee, my name is Margarita Flores, and, since 1988, I have been the personnel director for the Whitehall plant in Guayama, Puerto Rico. I am pleased to appear today to discuss the highly successful JTPA OJT program at our facility.

Our facility is known as the plant that Advil built. Advil production accounts for 75 to 80 percent of our operations. We produce over 70 percent of all the Advil marketed in the United States today. We also produce and package smaller quantities of products in the company's Anacin, Denorex, Primatene, and Dristan lines, which account for approximately 25 percent of our operations.

As personnel director, my office was responsible for hiring all of the workers of the new plant. We concentrated on applicants from the local Guayama area, which has historically suffered from as high as 31 percent unemployment rate. The per capita income in Guayama is less than $1,700, one of the very lowest income rates of any United States citizens.

We currently employ over 450 full-time workers. More than 70 percent of them are from Guayama. Together with our neighbor, another AHP plant, we are the largest private employers in Guayama. The average income of our hourly workers is over $19,000 a year. As you can imagine, the job opportunities we have brought to Guayama have greatly improved the local economy and the lives of our workers and their families. Even with all these new jobs, the unemployment rate in Guayama is still over 21 percent.

In Puerto Rico, the JTPA is administered by La Administracion del Derecho al Trabajo, ADT. Because of Whitehall's importance in the Guayama community, ADT approached my plant manager in early 1988, as we were starting up operations, and requested that we participate with them in hiring and training local workers through JTPA. I prepared proposals for the hiring and training of as many as 166 ADT applicants. My proposals contained an outline of the on-the-job training requirements for each position. Our plant, like other OTC facilities, must follow current good manufacturing practices as mandated by the FDA and OSHA safety requirements. Our local management has developed its own manual

and regimens for training our plant workers, including those hired through ADT to meet these requirements.

ADT assigned on-the-job training hours to each proposed position using the Dictionary of Occupational Titles. In most cases, ADT assigned the minimum number of hours established in the Federal guidelines. Funding was authorized in the amount of approximately $431,000.

Mr. Chairman, I should note that I negotiated JTPA proposals with ADT at three prior companies. I was familiar with the standards followed by ADT and followed those same standards for Whitehall. I further understand that the Department of Labor and ADT recently have audited our programs and concluded that the numbers of hours specified for length of training for each position was appropriate.

After approving our programs, ADT selected and referred to us economically disadvantaged applicants. These applicants were unemployed, with a household income below poverty levels. ADT had a flood of applicants from the Guayama area who met these criteria. Most of them would have no opportunity to interview for jobs at our facilities without ADT's help.

Due to high unemployment in Puerto Rico, we had thousands of job applicants in our facility. Most had 4 or 2-year college degrees, as well as prior work experience. ADT applicants could not have competed with these other, more qualified candidates without the incentives offered under JTPA. As personnel director, I was able to use the JTPA funding to persuade my plant management to give some of these applicants a chance over more qualified candidates.

Even with the funding, I was successful in filling only 78 of the 166 positions approved by ADT. In return, the company received approximately $217,000 in ADT funds. The company chose to forego the remaining $214,000 in available ADT funds so that it could select candidates with better work and educational background.

For example, we had originally proposed hiring chemists and quality control coordinators through ADT. These positions were ultimately filled with qualified experienced candidates without any ADT funding.

Mr. MARTINEZ. Let me stop you right there.

Mrs. FLORES. Yes.

Mr. MARTINEZ. You see, I understand, where the confusion comes in and the complication develops is because you have a lot of people in Puerto Rico who are very highly educated but no jobs. But you also have a lot of people that are not educated and no jobs. The problem is, no jobs. A 30 percent unemployment rate creates a real problem.

So here is where it's difficult to blame you completely, and it's difficult to blame the company completely. It's a marriage of convenience, for the convenience sake of both, when both are really not carrying out the mandate of the law, which is to serve the most needy and the most deserving. I understand that.

But, see, at some point in time, we have—you know, when you have to choose between the poor and the poorer, what choice do you have? And the problem here is that somehow we have to look at the intent of the law.

You know, your past resident commissioner, Jaime Fuster, was on the Education and Labor Committee. One of the things he continually argued about was the need to treat Puerto Rico, with all the laws that we have, slightly different than we do the rest of the United States, and the reason being because of the unique situations there.

That is one of the things that I've tried to do in the new amendments, to address those problems of Puerto Rico, because they are different and unique. The unemployment rate is higher. We were able to, successfully, in the minimum wage, set a different minimum wage for Puerto Rico, because we would have actually cost them jobs.

But it doesn't take away from the fact that, rather than still selecting the ones only that they would select, is to try to push down their throat at least some of those—not 100 percent—but at least some of those that were the least qualified. Because, as far as disadvantage, almost everybody in Puerto Rico, except the few that are, wealthy and well-to-do, which every society has, we have to reach, at least to some extent, those that are absolutely at the bottom end of the ladder. In this process, none of those were reached.

And you had a choice to make: Do we give them, to a degree, what they need or want, forsaking those at the real bottom, and then have them take nothing? I mean, that's what, it seems to me, was the option left to you, and you decided, "Hey, I'm going to get who I can get on there," trying to reach as far down the ladder as you could.

I just want to say that, because I have to rush and vote, I want to make sure that—and I'm glad the chairman is back to hear that point, because I think it's a very important point—as you go on with your testimony, if you would ad lib a little bit about that particular situation that you have there, the uniqueness of overeducated people with no jobs available for the overeducated or the undereducated.

Thank you.

Mrs. FLORES. Thank you.

In short, I firmly believe that, without the ADT programs, few, if any, of the 78 ADT participants would have jobs at our plants. Moreover, 16 percent of the participants were part of a special apprenticeship program sponsored by ADT for 2,000 hours of on-the-job training. They received certificates from the Department of Labor that typically required over 2 years of industrial education.

Many of our ADT participants were trained exclusively for Advil production. Advil has a complex, multistep production process that requires 12 to 14 days. In contrast, Anacin, which was the main product at Elkhart, takes less than 2 days. Training for Advil-related operations is necessarily more intensive.

I understand that this type of training was never provided to any of the former workers at the Elkhart plant because Advil was never manufactured there. It is thus impossible to compare the types of training the Elkhart workers might have received with much of the training given to those ADT participant at our Guayama facility.

Mr. Chairman, our plant is a new, highly regulated manufacturing facility with sophisticated, state-of-the-art equipment and technology. Our ADT applicants had never worked in pharmaceutical

industries, and most had no education beyond high school. Unlike Elkhart, we were a brand new plant with no experienced coworkers to assist in training. Full and proper on-the-job training of our employees was and remains vitally important to us.

For example, an industrial cleaner hired through ADT was trained to do much more than push a mop, as has been wrongly suggested to this subcommittee. These applicants received training in 40 categories of current good manufacturing practices, safety regulations, and related operating procedures.

Among other things, they were trained to select proper cleaning agents for our production equipment, depending on the drug compound being manufactured. They also learned how to handle and dispose of engineering and maintenance waste, clean surfaces with special chemicals, and use insecticides and pesticides safely within different areas of the facility.

Mr. Chairman, even simple dust mopping requires some training, since different chemical compounds require either dry, damp, or wet mopping for safe and proper cleaning. These training requirements help us ensure that our facilities are well maintained and, more importantly, that the drugs and medicine we produce are safe, effective, and of the highest quality.

The local ADT administrators conscientiously visited our facilities on a monthly basis to review our recruiting, hiring, and training practices. We never received a single complaint about the administration of our programs. I am proud to report that all of the ADT participants became full-time Whitehall employees. Over 90 percent of them are still employed at the plant, and many have been promoted to positions of greater responsibility and compensation.

We believe the JTPA program at our plant was highly successful. The true believers in the program, however, are the participants themselves. Angel Sanabria, for example, was a local unemployed field hand. After receiving on-the-job training at our plant as an industrial cleaner, he has gone on to become a warehouse operator, making $17,600 per year plus benefits.

Another ADT participant, Elizabeth Lebron, a single parent with three children, with no job prospects, she received on-the-job training as an industrial cleaner, was promoted to group leader of that group, and recently, after receiving additional training by the company, is now employed as an assistant machine mechanic, with an annual salary of $19,700, plus benefits. Each of the 78 ADT participants has a similar story to tell. These workers, like many other U.S. workers, owe their jobs to the JTPA.

Mr. Chairman, that concludes my remarks, and I would be pleased to answer any questions to you or members of the subcommittee.

[The prepared statement of Ms. Flores follows:]

STATEMENT OF MARGARITA FLORES
BEFORE THE
EMPLOYMENT AND HOUSING SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman and members of the subcommittee, my name is Margarita Flores. Since 1988, I have been the Personnel Director of an over-the-counter drug manufacturing facility located in Guayama, Puerto Rico. The plant is operated by Whitehall Laboratories PR, a division of Ayerst-Wyeth Pharmaceuticals, Inc. Ayerst-Wyeth Pharmaceuticals is an indirect, wholly-owned subsidiary of American Home Products Corporation.

PERSONAL AND PLANT BACKGROUND

Prior to my employment at Whitehall, I held personnel management positions with three other companies in Puerto Rico. I have over fifteen years of experience in the personnel field, and served as President of the Puerto Rico Chapter of the American Society for Personnel Administration in 1986.

When I joined Whitehall in 1988, the plant was just starting operations. Our plant is located next to a prescription drug facility operated by the Wyeth-Ayerst Division of American Home Products. As Personnel Director, I know that Wyeth's positive

experience with the Puerto Rico work force was one of the reasons Whitehall decided to locate in Guayama.

Our facility was built primarily to produce Advil, an over-the-counter analgesic. The main ingredient in Advil is ibuprofen. Prior to the construction of our plant, Whitehall purchased bulk ibuprofen tablets from an outside vendor located in England. We now have the capacity to produce the tablets in-house. On any given day, Advil production accounts for between seventy-five (75%) and eighty (80%) percent of our operations. We produce about seventy percent (70%) of all the Advil marketed in the United States today. The remainder is produced at the company's Hammonton, New Jersey plant.

Our Guayama facility is known within American Home Products as "the plant that Advil built." We also produce and package smaller quantities of products in the company's Anacin, Denorex, Primatene, and Dristan lines, which accounts for approximately twenty-five percent (25%) of our operations. We are proud of our plant's success and, from my personal perspective, I believe we have fully justified the company's faith in the quality and commitment of our Puerto Rico workers.

USE OF JTPA FUNDS AT THE PLANT

As Personnel Director, my office was responsible for hiring all of the workers at the Whitehall plant and overseeing their training and development. We concentrated on applicants from the local Guayama area in meeting our hiring needs. The Guayama area has historically suffered from as high as thirty-one percent (31%) unemployment and has been designated as an "emergency unemployment zone" by the Governor of Puerto Rico. The per capita income in Guayama is less than $1,685. This is one of the very lowest income rates for any group of United States citizens.

We currently employ over 450 full-time workers at the Whitehall plant. More than seventy percent (70%) of them are from Guayama. Together with the adjacent Wyeth prescription drug facility, we are the largest private employer in the Guayama area. The average income of our hourly workers is $19,418, which is more than ten (10) times higher than what most Guayama residents earn. As you can imagine, the job opportunities we have brought to Guayama have greatly improved the local economy and the lives of our workers and their families. Even with the addition of our

facilities, however, the unemployment rate in Guayama is still over twenty-one percent (21%).

Contacts With Local ADT Officials

In Puerto Rico, the Job Training and Partnership Act program is administered by the Administracion del Derecho al Trabajo ("ADT"). The ADT has a regional office located in Guayama, which is dedicated to helping alleviate the area's severe unemployment problems. Because of Whitehall's importance to the Guayama community, the ADT approached our plant manager in 1988 and requested that we consider participating with them in hiring and training local workers at our facility through the JTPA program.

In response to ADT's request, I prepared five separate proposals. My proposals contemplated the hiring and training of as many as 166 ADT applicants for entry level jobs at the plant. These jobs included positions as industrial cleaners, packers, machine operators, shipping and receiving clerks, and maintenance mechanics.

My proposals contained an outline of the on-the-job training requirements for each of these positions. The requirements were developed by our local plant management, which was starting from scratch with a brand new facility. Our plant, like other OTC facilities, must follow current Good Manufacturing

Practices as mandated by the U.S. Food and Drug Administration. Although I understand that these CGMP requirements have resulted in fairly standardized training methods for some OTC production jobs, our local Guayama management has developed its own proprietary manuals and regimens for training our plant workers, including those hired through the ADT programs. Our applicants had no prior experience in the pharmaceutical industry and, because we were a brand new plant, there was no existing pool of experienced workers to assist in their training efforts. Our situation was thus dramatically different than the situation at Whitehall's Elkhart, Indiana facility -- where new employees worked side-by-side with workers who had years of production experience.

I personally submitted our five proposals to the local Guayama ADT administrators in May, June, and August of 1988. On each occasion, we discussed the nature of these entry level positions and the types of on-the-job training each one would require. Our discussions were based on my understanding of the work responsibilities for these positions at the Guayama plant. I did not refer to or discuss any comparable positions or training requirements at the company's Indiana or New Jersey facilities.

Assignment Of On-The-Job Training Hours

Based on the job descriptions and training outlines contained in my proposals, the ADT administrators assigned total on-the-job training hours to each particular position using a standard federal handbook, entitled the Dictionary of Occupational Titles. I understand that ADT essentially matched the general job descriptions and funding hours outlined in that handbook with the job descriptions we had supplied. In accordance with federal guidelines, ADT authorized funding in the amount of one-half of the total job training hours assigned for each applicant. This amounted to approximately $431,000 for all 166 positions, or $2,600 per applicant.

After ADT set the total number of funding hours for each position, our local management assigned estimated hours for each required area of training as outlined in our proposals. These hours included classroom-type instruction -- which we were not required by ADT to provide -- as well as time for actual on-the-job training and experience with respect to each particular job function. We then submitted each of these training outlines to ADT for approval. The ADT administrators informed us that they appreciated the level of detail we provided in our training regimens and indicated that this was beyond

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what was typically supplied by other JTPA participants. All of these steps took place before any of our proposals were finally approved and before any recruitment was done under the training programs.

Mr. Chairman, I should note that I negotiated JTPA proposals with the ADT at each of my three prior companies. I was thus familiar with the standards and procedures followed by the ADT. I followed those same standards and procedures in my negotiations on behalf of Whitehall. I further understand that the Department of Labor has audited our ADT programs and concluded that the number of hours specified for length of training for each position was appropriate, with one possible exception which is still under review. We are confident the training hours assigned to that position will also be justified.

Hiring And Training Of ADT Participants

As a condition for participating in its job training programs, the ADT selects and refers the applicants for each position. The ADT chose applicants who were defined as "economically disadvantaged." A person was "economically disadvantaged" if he or she was unemployed with a household income below the poverty level.

The ADT had a flood of applicants from the Guayama area who met these criteria. Most of these applicants

would have had no opportunity to interview for jobs at our facility without the ADT's assistance. Due to the high unemployment in Puerto Rico, we had literally thousands of applicants for the job openings at our facility. Many of these candidates had four or two year college degrees, as well as prior work experience. The ADT applicants, who were unemployed and had only high school educations, could not have competed with these other, more qualified candidates without the funding incentives offered under the JTPA. As Personnel Director, I was able to use this funding assistance as an incentive in persuading my plant management to give some of these ADT applicants a chance over otherwise more qualified candidates. Even with the funding, I was successful in filling only seventy-eight (78) of the 166 positions approved by ADT. In return, the company received approximately $217,000 in ADT funds, or roughly $2,780 per applicant.

My local management chose to forgo the remaining $214,000 in available ADT funds so that they could select candidates with better work and educational backgrounds. For example, we had originally proposed hiring ten (10) chemists and (13) thirteen quality control coordinators under the ADT programs. Our plant management subsequently determined to fill these positions with qualified, experienced candidates,

rather than training "economically disadvantaged" applicants selected by ADT. These jobs were filled through our normal hiring procedures without any ADT funding. In short, I firmly believe that, but for the ADT programs, few, if any, of the seventy-eight (78) ADT participants would have jobs at our plant.

A summary of our five ADT proposals and the actual hiring and funding assistance we received under the training programs has been supplied to the subcommittee as part of my written testimony. In brief, 59 of the 78 JTPA participants were subsidized for 480 hours, or 12 weeks, of on-the-job training for positions as industrial cleaners, packers, and machine operators. This group comprises over 75% of our ADT program. Three (3) of the participants were subsidized for 1,040 hours, or 26 weeks, of on-the-job training for positions as shipping and receiving clerks.

The remaining 16 participants were subsidized for 2,000 hours, or 50 weeks, of training as machine operators and machine mechanics. These sixteen (16) workers were part of a special apprenticeship program sponsored by the ADT. Under the program, ADT provided 2,000 hours of on-the-job training for each apprentice. At the end of the program, the participants received apprenticeship certificates from the Puerto Rico Department of Labor. In lieu of such training, a

66-307 O - 93 - 6

worker would need two years of industrial education to qualify for such certification. We participated in the apprenticeship program at the specific request of ADT.

Each of the ADT applicants received on-the-job training by our local management. Many of our ADT participants, including machine workers and maintenance mechanics, were trained exclusively for Advil production. Unlike Anacin and other traditional analgesics, Advil has a complex, multi-step production process. Anacin takes less than two days to manufacture, Advil requires twelve to fourteen days. Training for Advil-related operations, therefore, is necessarily more intensive. I understand that this type of training was never provided to any of the former workers at the Elkhart Plant because Advil was never manufactured there. It is thus impossible to compare the types of training the Elkhart workers might have received with much of the training given to these ADT participants at our Guayama facility.

Our other ADT participants, including the industrial cleaners, packers, and shipping and receiving clerks, were trained for jobs that touch upon all of the products manufactured and packaged at our facility. Because Advil production accounts for about seventy-five percent (75%) of our operations, however,

most of their training was also directed to Advil-related work.

ADT Workers Were Trained From Scratch.

Mr. Chairman, please remember that our plant is a new, highly regulated drug manufacturing facility with sophisticated, state-of-the-art equipment. Our ADT applicants had never worked in the pharmaceutical industry before, had no education beyond high school, and, because we were a brand new plant, had no experienced co-workers to assist them in their training. Full and proper training of these employees was and remains vitally important.

For example, the industrial cleaners hired under the ADT programs were trained to do much more than push a mop, as has been wrongly suggested to this subcommittee. These applicants received training in forty categories of CGMP's, safety, and related operating procedures. Among other things, they were trained to select proper cleaning agents for our production equipment, depending on the drug compounds being manufactured. They also learned how to handle and dispose of engineering and maintenance waste, clean surfaces with special chemicals, and use insecticides and pesticides safely within different areas of the facility. Even simple dust mopping required some training, Mr. Chairman, since different chemical

compounds require either dry, damp, or wet mopping treatment for safe and effective cleaning. These training requirements help us ensure that our facilities are properly maintained and, more importantly, that the drugs and medicines we produce are safe, effective, and of the highest quality.

I should also note that local ADT administrators visited our facility on a monthly basis to review our recruiting, hiring, and training practices. I am pleased to report that we never received a single complaint about our administration of the programs.

I am also proud to report that all of the seventy-eight (78) ADT participants became full-time Whitehall employees at the conclusion of their on-the-job training. Over ninety percent (90%) of them are still employed at the plant, and many have been promoted to positions of greater responsibility and compensation. Each of these ADT participants now has highly marketable job skills and experience, thanks to the JTPA program.

The ADT and our local plant management consider the JTPA programs to have been highly successful. The true believers in the program, however, are the participants themselves. Angel Sanabria, for example, was a local, unemployed field hand. After receiving on-the-job training at our plant as an industrial

cleaner, he has gone on to become a warehouse operator making over $17,600 per year plus benefits. Another of our ADT participants, Elizabeth Lebron, was a single parent of three children with no job prospects. She received on-the-job training as an industrial cleaner, was promoted to group leader, and, after receiving additional training by the company, is now employed as an assistant machine mechanic with an annual salary of $19,700 plus benefits.

Each of our seventy-eight (78) ADT participants has a similar story to tell. These workers, like many other U.S. workers, owe their jobs to the JTPA.

Mr. Chairman, that concludes my remarks. I would be pleased to answer any questions you or the other subcommittee members might have at this time.

ADT PROGRAM SUMMARY
Whitehall - Guayama Plant

PROPOSAL NO.: 248-3-28-83870

POSITIONS ORIGINALLY PROPOSED: 8

	Participants	Hours
Maintenance Mechanic	4	1,000
Shipping & Receiving Clerk	4	1,040

ACTUAL POSITIONS RECRUITED (as approved by ADT): 7

	Participants	Hours
Maintenance Mechanic	4	2,000
Shipping & Receiving Clerk	3	1,040

RECRUITMENT:

SHIPPING & RECEIVING CLERK:

Name	On-the-job Training Hours	Start Date	Term Date
1. Sergio Cadiz	1,040	08-88	04-89
2. Miguel Vega	1,040	11-88	05-89
3. Ismael Stella	1,040	03-89	09-89

MAINTENANCE MECHANIC:

1. Pablo Bermudez	2,000	09-88	10-89
2. Andres Diaz	2,000	10-88	10-89
3. Serbio Cintron	2,000	01-89	01-90
4. Nelson Rodriguez	2,000	03-89	03-90

FUNDING ORIGINALLY APPROVED: $47,516.80

TOTAL BILLED: $43,988.07

TOTAL RECEIVED: $43,988.07

EFFECTIVE DATE: June 28, 1988 through June 30, 1989

PROPOSAL NO.: 248-3-28-83870 (cont.)

EXTENSIONS: June 16, 1989: Contract extended to April 30, 1990

November 16, 1989: Contract extended further to June 30, 1990

November 21, 1989: Contract termination date corrected to April 30, 1990

December 21, 1989: Contract extended further to June 30, 1990

ADT PROGRAM SUMMARY
Whitehall - Guayama Plant

PROPOSAL NO.: 248-3-28-83881

POSITIONS ORIGINALLY PROPOSED: 8

	Participants	Hours
Maintenance Mechanic	4	1,000
Shipping & Receiving	4	1,040

ACTUAL POSITIONS RECRUITED: No recruitment was done under this proposal

FUNDING ORIGINALLY APPROVED: $47,516.80

TOTAL BILLED: 0

TOTAL RECEIVED: 0

EFFECTIVE DATE: June 29, 1988 through June 30, 1989

TERMINATION: Contract cancelled January 25, 1989

ADT PROGRAM SUMMARY
Whitehall - Guayama Plant

PROPOSAL NO.: 248-3-28-93945

POSITIONS ORIGINALLY PROPOSED: 8

	Participants	Hours
Machine Operator	2	2,000
Maintenance Mechanic	2	2,000
Quality Control Coordinator	3	1,440
Industrial Cleaner	1	480

ACTUAL POSITIONS RECRUITED (As approved by ADT): 8

	Participants	Hours
Machine Operator	5	2,000
Maintenance Mechanic	0	0
Quality Control Coordinator	0	0
Industrial Cleaner	3	480

RECRUITMENT:

INDUSTRIAL CLEANER:

Name	On-the-job Training Hours	Start Date	Term Date
1. Francisco Rosario	480	08-88	12-88
2. Elizabeth Lebron	480	05-89	08-89
3. Angel Vega	480	05-89	08-89

MACHINE OPERATOR:

1. Gerardo Rivera	2,000	09-88	12-89
2. Felix Lind	2,000	09-88	12-89
3. Wilda Tanon	2,000	01-89	02-90
4. Hector Melendez	2,000	01-89	02-90
5. Elsa Colon	2,000	01-89	02-90

FUNDING ORIGINALLY APPROVED: $48,600.80

TOTAL BILLED: $39,848.01

TOTAL RECEIVED: $39,848.01

EFFECTIVE DATE: August 22, 1988 through June 30, 1989

EXTENSIONS: July 7, 1989: Contract extended to December 29, 1989

December 13 1989: Contract extended further to June 30, 1990

ADT PROGRAM SUMMARY
Whitehall - Guayama Plant

PROPOSAL NO.: 248-3-28-93948

POSITIONS ORIGINALLY PROPOSED: 7

	Participants	Hours
Machine Operator	7	2,000

ACTUAL POSITIONS RECRUITED (as approved by ADT): 7

	Participants	Hours
Machine Operator	7	2,000

RECRUITMENT:

MACHINE OPERATOR:

Name	On-the-job Training Hours	Start Date	Term Date	Balance*
1. Tomasa Ramos	2,000	09-88	08-89	71.50
2. Hector Cora	2,000	09-88	08-89	154.50
3. Siso Morales	2,000	09-88	08-89	207.75
4. Santos Rivas	2,000	10-88	08-89	296.75
5. Miriam Negron	2,000	10-88	08-89	319.25
6. Carlos Matos	2,000	10-88	08-89	240.50
7. Ariel Collazo	2,000	10-88	08-89	265.25

*Hours not billed due to termination of contract.

FUNDING ORIGINALLY APPROVED: $49,840.00

TOTAL BILLED: $44,302.42

TOTAL RECEIVED: $44,302.42

EFFECTIVE DATE: August 29, 1988 through August 30, 1989

ADT PROGRAM SUMMARY
Whitehall - Guayama Plant

PROPOSAL NO.: 248-3-28-93972

POSITIONS ORIGINALLY PROPOSED: 135

	Participants	Hours
Shipping & Receiving Clerk	15	480
Quality Control Coordinator	10	480
Chemist Pharmaceutical	10	480
Packer	40	480
Janitor	10	480
Maintenance Mechanic	30	480
Machine Operator	20	480

ACTUAL POSITIONS RECRUITED (as approved by ADT): 56

	Participants	Hours
Shipping & Receiving Clerk	0	0
Quality Control Coordinator	0	0
Chemist Pharmaceutical	0	0
Packer	20	480
Maintenance Mechanic	0	0
Machine Operator	20	480
Industrial Cleaner	16	480

RECRUITMENT:

INDUSTRIAL CLEANER:

Name	On-the-job Training Hours	Start Date	Term Date
1. Ivette Rodriguez	480	09-88	12-88
2. Angel Sanabria	480	09-88	12-88
3. Luis Lopez	480	09-88	12-88
4. Carlos Torres	480	09-88	12-88
5. Jorge A. Cruz	480	09-88	12-88
6. Wanda Santiago	480	10-88	12-88
7. Jorge Colon	480	10-88	12-88
8. Concepcion Santiago	480	11-88	02-89
9. Hector Roldan	480	06-89	10-89
10. Hung Tran Thi	480	07-89	11-89
11. Maribel Vazquez	480	07-89	11-89
12. William De Jesus	480	09-89	12-89
13. Pedro Rondon	480	11-89	01-90
14. Lilliam Rivera	480	11-89	01-90
15. Miriam Ramos	480	11-89	01-90
16. Evelyn Diaz	480	08-89	11-89

PROPOSAL NO.: 248-3-28-93972 (cont.)

RECRUITMENT:

PACKER:

1. Griska Lopez	480	09-88	12-88
2. Luis Matos	480	09-88	12-88
3. Wanda Couvertier	480	09-88	12-88
4. Nilda Rodriquez	480	09-88	12-88
5. Angel Laboy	480	09-88	12-88
6. Denise Rodriguez	480	09-88	12-88
7. Teresa Vazquez	480	09-88	12-88
8. Evelyn Martinez	480	09-88	12-88
9. Matilda Rodriguez	480	09-88	12-88
10. Enid Orta	480	09-88	12-88
11. Ana C. Garcia	480	10-88	01-89
12. Awilda Campos	480	10-88	02-89
13. Roberto Silva	480	04-89	07-89
14. Arcadio Torres	480	04-89	06-89
15. Elizabeth Rosario	480	04-89	07-89
16. Josephine Gutierrez	480	04-89	07-89
17. Elizabeth Soto	480	06-89	09-89
18. Migdalia Reyes	480	06-89	09-89
19. Rosa M. Torres	480	06-89	09-89
20. Noel Ortiz	480	07-89	10-89

MACHINE OPERATOR:

1. Jenny Torres	480	10-88	01-89
2. Jose Rivera Mercado	480	10-88	02-89
3. Maria Vega	480	12-88	03-89
4. George Moreno	480	12-88	02-89
5. Alma Contreras	480	02-89	04-89
6. Wilberto Figueroa	480	02-89	04-89
7. Celestino Hernandez	480	01-89	02-89
8. Aixa Perez	480	01-89	04-89
9. Nilsa Bernier	480	01-89	04-89
10. Eda Negron	480	01-89	04-89
11. Ramona Rodriguez	480	02-89	04-89
12. Ignacio Santiago	480	02-89	05-89
13. Juan C. Aponte	480	02-89	05-89
14. Jose D. Vega	480	02-89	05-89
15. Jose M. Garcia	480	02-89	05-89
16. Coronado Solivan	480	02-89	05-89
17. Olga E. Rodriguez	480	02-89	05-89
18. Edward Hernandez	480	02-89	05-89
19. Neisha Torres	480	03-89	06-89
20. Gerardo Vasquez	480	02-89	05-89

PROPOSAL NO.: 248-3-28-93972 (cont.)

FUNDING ORIGINALLY APPROVED: $237,756.00

TOTAL BILLED: $89,039.99

TOTAL RECEIVED: $89.039.99

EFFECTIVE DATE: September 20, 1988 through January 31, 1989

EXTENSIONS: February 22, 1989: Contract extended to May 31, 1989

April 28, 1989: Contract further extended to July 31, 1989

June 30, 1989: Contract further extended to December 31, 1989

December 21, 1989: Contract further extended to June 30, 1990

Mr. LANTOS [presiding]. Thank you very much, Mrs. Flores.

Let me begin, Mr. Stafford, with you. At last week's hearing, the subcommittee heard dramatic testimony from Ms. Bernice Gilbert, who had worked at your Indiana plant for 24 years. She joined American Home Products when she was 19. I want to read part of her testimony to you, since you were not here last week. I am quoting:

> Since the shut-down was completed last fall, my life and the lives of our members in Elkhart have been miserable. I personally have suffered severe depression and heartache and great family hardships. After September, I, myself, will be without health insurance, and I cannot imagine what would happen if I became seriously ill. Our family savings have shrunk to almost nothing.
>
> I am 44, and the job market in Elkhart is awful, especially for women and people my age and older. Instead of being in our prime earning years, looking forward to a secure retirement, my husband and I are split apart. He is now suffering a sharply lower standard of living, and I am dependent upon unemployment compensation. Both of us are just one more calamity away from complete ruin.
>
> I can only see near-poverty for the rest of my life. This is the reward I get for giving American Home Products the best years of my life. This is what Elkhart gets for having a plant that was always profitable, always efficient, always willing to work three shifts a day, 7 days a week, during flu epidemics, the Tylenol scare, and other rush times.
>
> To be honest with you, I'm afraid to look for a job now. I am scared to commit myself to another company for fear they will do what American Home Products did to me. When you go through what I have been through, you can never trust a company again. I will be mistrustful of any employer for the rest of my life.

What would you say to Mrs. Gilbert, if she were here today?

Mr. STAFFORD. Well, I would say I regret very much her personal circumstances, and, as an employer, I regret the necessity of terminating any employee, whether it's an individual or whether it's a unit that needs to be terminated. However, it is necessary that companies such as ours, as well as others, and other institutions, remain competitive and control their expenses. One aspect of expenses, of course, a major aspect, is the production facilities.

It is not prudent and in the interest of all the other employees of the company, as well as the stockholders and the constituencies that we serve, such as the medical community and patients, to continue to operate a company in an inefficient manner. And operating facilities which are no longer necessary, because we have lower sales and overcapacity, would be inefficient.

Therefore, at times, these decisions are necessary. When we make these decisions, which we must do from time to time, as any institution must do, if it is going to remain competitive and be able to grow in the future, we try to provide various forms of support for the employees, and that would include severance pay, extended health care benefits. Sometimes these benefits are negotiated in contract, and sometimes they are accorded outside of a contract.

In addition, and in particular in this case, we opened a facility to provide training and then also to provide job posting. The training facility, unlike the testimony that was presented last week, was in fact open to all employees, but the union declined to participate unless they could fully control it. So therefore the union did not participate in our training facility.

We did have, and still do have, in Elkhart, a referral office, which includes the posting of jobs that are available in other parts of the country. We have, to date, posted over 800 jobs in that facility, in other parts of the country, for our Elkhart employees where,

under the union contract, they would be given first preference. Some have taken advantage of that opportunity and taken positions, but not very many.

And I appreciate that personal circumstances often make relocation to another area difficult and sometimes impossible. But, in terms of trying to cushion the adverse results which occur from any plant closing or the reduction of any work force, we have programs in place, and we try to work with the groups to lessen the negative impact.

Mr. LANTOS. In 1988, you built a new plant in Guayama, Puerto Rico, to make over-the-counter pharmaceutical products. In your testimony you state three reasons why you chose this place: You already had an existing facility there; there was a competent labor force; and tax benefits under section 936 of the IRS Code. Which was the primary reason for locating the plant in Puerto Rico? Is it the fact that American Home Products gets over $70,000 in Federal tax breaks for every worker you employ in Puerto Rico?

Mr. STAFFORD. The tax aspects for the Whitehall Guayama plant were not significant. The total tax benefit which we have received under section 936, since opening the plant, is about $5 million. The plant opened, I believe, in 1988—we started production. The plant cost over $50 million to build. So a tax benefit, a cumulative tax benefit of only $5 million would not have been a sufficient incentive to move the plant there.

No, the other reasons were important. We had a good location. We had a good work force. We wanted to bring the Advil production back from the United Kingdom, and we looked at several sites, including several States in the Southwest, and Puerto Rico. Taking all the factors into consideration, we decided to build the plant to produce Advil, as well as some other products, in Guayama.

Congressman, I completed the answer even though, of course, the chairman had to leave. But I assume you would have wanted me to complete that for the record.

Mr. MARTINEZ [presiding]. Yes, we did. The chairman has some other questions that I'm going to allow Mr. Weisburg to ask in his absence, because they will be a part of the record, in order to keep the meeting going.

Mr. WEISBERG. Thank you.

Mr. Stafford, American Home Products is a large, very profitable company with a net income of more than $1.3 billion last year. Why did it take a nearly $250,000 Federal training subsidy giveaway from Puerto Rico?

Mr. STAFFORD. Well, you know, it wasn't a gift. We didn't take it. This was a partnership program which we entered into at the request of the local agency. We don't have a general policy throughout the company of utilizing the JTPA program. Other uses have been quite incidental, I understand.

But, in this particular instance, we had a new plant; we were going to put on a lot of workers. We had a very high unemployment situation and a lot of people in Puerto Rico who were unemployed despite perhaps their educational qualifications. And when the agency came to us, we had on staff an experienced person in these programs, someone who had run the programs before, and it

seemed like, to us, that it would be a good corporate citizen act to put these people on the payroll.

In fact, I think, you know, if you take a look at this thing from an overall standpoint, what you have is an expenditure of an average of, say, $2,500 of taxpayers' money on this program in connection with our Guayama employees. And, 4 years later, over 90 percent of these people, who were in households below the poverty line—that should be emphasized—are still employed. They are paying taxes. They are enjoying the health care benefits; they are enjoying all the other benefits of being employees.

So I think, in terms of the use of taxpayers' money, I'd have to say this was a very good use of it. These people are still working, and they have good jobs. They were well trained, and I think we can be proud of the people in Guayama who carried this program out for the company.

Mr. WEISBERG. You referred to being a good corporate citizen, now, in your written testimony, specifically at page 9, you state, "We received approval to hire 166 people. We only hired 78 because the pool of applicants did not have the type of experience or education we would otherwise require."

That suggests that you weren't interested in training economically disadvantaged people, which is what the JTPA is all about, but, rather, wanted well educated and experienced workers and the Federal assistance that came with it. If this isn't creaming, I don't know what is.

Mr. STAFFORD. Well, I think all of them, as I understand it, were economically disadvantaged. But you have to understand that this is a pharmaceutical plant, and the standards of quality that we are required to adhere to by the Food and Drug Administration are extremely high, the highest in the world. And our quality control area, which, for example, I believe is where the chemists were slated to be hired, has very elaborate and extensive procedures that they must follow.

In this particular instance, our local people felt that, unless we had some experienced people to bring into those positions, that we could not assure the high quality of our products, which both our customers and the government have come to expect.

Mr. WEISBERG. Mr. Stafford, the argument that American Home Products' true motive was to train economically disadvantaged individuals, to be a good corporate citizen doesn't hold water for another reason. Let me show you a document and ask you to comment on it.

Mr. Stafford, in January 1990, when you were planning to visit the Guayama plant, a trip memo was prepared for you. The last page is entitled, "Cost Reduction Progress," and it lists projects that saved American Home Products money at its Guayama plant in 1989. For example, the first one on the list is, "Purchased sulfuric acid instead of low pH solution for cooling tower water treatment." Another is, "In-House calibration of scales and thermometers versus outside contractors," all money-saving projects.

Also on this list of cost reduction savings is the following: "Training rebate from Federal Government, $145,100, suggested by M. Flores." "M. Flores," I assume, refers to Margarita Flores, your personnel director.

This memo suggests that what Chairman Lantos referred to as a giveaway by Uncle Sam was viewed by the company as a rebate, a cost-reduction project. Would you please comment on that?

[The information follows:]

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AMERICAN HOME PRODUCTS

J.J. STAFFORD 1/12/90

Visit to Guayama

AMERICAN HOME PRODUCTS
1/12/90 Guayama Visit

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4. DISCUSSION TOPICS

WHITEHALL LABORATORIES, P.R.

Background Data

Site Data

Area	42	Acres
Start of Construction	Jul	1987
Completion of Construction	Aug	1988
First Production	Oct	1988
Advil FDA Approval	June	1989
Full Third Shift Capacity	Sept	1989
Facility Cost		
AHT	$ 57.6 mm *	
Actual	$ 58.2 mm	
Employment Promise	400 total	
Actual Employment Jan 1990		
Active Employees	424	
Temporaries	33	

Products

Current- Advil Tabs/Caps, Anacin, Dristan, Denorex Regular, Herbal and Conditioners

New Products for 1990- Primatene Tabs, Denorex ES, Dristan MS

* Original Plan was to locate Whitehall within the AWPI site. Unable to do so for EPA reasons.

[redacted]

DIVISION/SUBSIDIARY: Churchill Laboratories LOCATION: Cadrama Page 2

PROJECT NUMBER	COMPLETED PROJECT DESCRIPTION Describe project, summarize savings achieved and identify individuals responsible	POTENTIAL SAVINGS (Yearly Basis)	ACTUAL SAVINGS
5 (IF 108)	Purchase sulfuric acid instead of low pH solution for cooling tower water treatment Suggested by: R. Delgado		$ 1,-
6 (IF 136)	Relocation of polishing pans reduced personnel requirements and provided space for new operations. Suggested by: E. Fanelli		$ 12,-
7 (IF 150)	In-house calibration of scales and thermometers vs. outside contractor. Suggested by: J. Soto		$ 2,5
8 (IF 139)	Minimize drum waste expense by contracting with a recycling co. Suggested by: A. Noble		$ 59,-
9 (IF 141)	Use of a new customs brokerage service Suggested by: E. Vasquez		$ 9,-
10 (IF 104)	[redacted]		[redacted]
11 (IF 247)	Automatic Inspec tablet check system. Suggested by: J. Arroyo		$ 55,5
12 (IF 145)	Pre-sample approval for corrugated. Suggested by: J. Ortiz		$ 9,-
13 (IF 151)	Implementation of MAB machine on Line 7 Suggested by: J. Holmes		$ 84,5-
	TOTALS (Number of Projects Listed: 9)		

APPROVALS

Division/Subsidiary Executive

Division/Subsidiary Controller

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Mr. STAFFORD. Well, first, you know, are you suggesting the use of the word "rebate" is somehow inconsistent with the concept of reimbursing the company for 50 percent of the salary?

Mr. WEISBERG. Not just use of the word "rebate," when it's on a page labeled, "Cost Reduction Progress," and all these are projects that deal with cost reduction. I understand the point if you move a machine 5 feet and that will save you $20,000, but in all those examples listed here, "Training rebate from the Federal Government," that was looked upon by the company itself, in your own internal document, as a cost reduction measure, not as being a good corporate citizen.

Mr. STAFFORD. Absolutely, it was cost reduction. I mean, this is a partnership program. It's a 50/50 deal. The government comes to you, or you can go to the government, and say, "We'll train some economically disadvantaged people on the job, and hopefully keep them employed after they complete their training program." And the government, by virtue of the act passed by Congress says, "We'll pay companies, we'll reimburse them, we'll provide them a rebate of 50 percent of their cost while they are in the on-the-job training."

And that is a cost reduction for the company, because, for that limited period of time, you are only having to pay half of the salary. But, of course, you have to pay the full salary beyond that period. So you certainly wouldn't take them on just to get half their salary for a few months; you take them on because you need them.

Mr. WEISBERG. That assumes that you have positions; you have to fill them anyway. And people who you hire you would have to train, and you would not be getting a rebate from the Federal Government.

Mr. STAFFORD. No, no. We keep making this distinction. These are not the people that we—we would have hired. We would have filled these jobs, but we would have filled these jobs, not from a list of economically disadvantaged people. They may have come to the plant and applied for these positions, but these were people that were selected by ADT out of a below-the-poverty-level group, and they said, "These are the people."

Mr. WEISBERG. What do you mean by—you keep——

Mr. MARTINEZ. Stuart, allow me to play the devil's advocate here.

Mr. WEISBERG. Sure.

Mr. MARTINEZ. The consideration you made on that trip was after the facility had been completed, and there were people working in there; isn't that so?

Mr. STAFFORD. Yes. I don't remember the trip in particular. This was probably prepared for me. I did visit the Whitehall facility after it was open, but whether it was this particular trip, I don't remember these documents.

Mr. MARTINEZ. The date on this memo is January 12, 1990, January 1990.

Mr. STAFFORD. Right.

Mr. MARTINEZ. From the previous information that I was reading, your facility there was completed in 1980-something, 1989, wasn't it?

Mr. STAFFORD. We were in production in 1988.

Mr. MARTINEZ. 1988. Right. 1988. The pool of applicants you gave to Mr. Stafford and the company was when, the 166 pool of applicants.

Mrs. FLORES. Since 1988.

Mr. MARTINEZ. 1988?

Mrs. FLORES. Yes.

Mr. MARTINEZ. Here's where I say I'm trying to play the devil's advocate here. The suggestion is here, and it's obvious, if you see a memo on cost reduction, and you're looking at a Federal rebate as part of that cost reduction, that you're looking at it as a plus and as being one of the reasons why you were taking the program, not as if we're being humanitarians and really doing the honorable thing, as was professed earlier. And I'm not saying that in a derogatory way.

I'm saying, just to make it clear, let's be factual about why we consider something. In this particular case, what Stuart is trying to point out is that it was considered by the company as a cost-saving benefit; is that right?

Mr. STAFFORD. Well, that's true. And this list was prepared by people who were identifying for me, on my visit, various areas in which they were going to reduce costs. And, obviously, they were going to identify this as an area to reduce costs.

Mr. MARTINEZ. I don't necessarily hold anything wrong with that, because I was in business myself, and I know, anytime you can save the cost of production, it's going to end up on the other end.

Mr. STAFFORD. Particularly when the boss is going to show up.

Mr. MARTINEZ. Right. Yes.

Mr. STAFFORD. You're going to make a list of things that you are looking good on. You're going to make a list of things that you're going to save some money on, and this was a cost savings. And when I, you know, said that we were doing this as good corporate citizens, I stand by that. I think, as the chairman pointed out, American Home Products is a large, successful company, with a payroll, in Guayama, total payroll, of $28 million annually.

So the savings of a couple hundred thousand dollars is not going to make or break us; it's not significant. Sure, it's a plus, and the local people saw it was a plus, and they participated in the program. But they also knew that it was going to require some extra effort on their part, more paperwork had to be prepared than would normally be prepared, they would have to track it, they would have inspections, so there was some added burden.

And they were going to be accepting people who were, while educated, were not people who were trained in pharmaceutical manufacturing. So it was a partnership, which is what the act is described as.

Mr. MARTINEZ. Let me ask you a question. You know, we understand the benefit, and it's supposed to be a mutually beneficial thing to the citizen who is able to obtain a job, and to the company who will be able to benefit from the production of that employee after he has been able to train him and stay with him over that long haul, that it takes a little extra time to train somebody less qualified.

Wouldn't you have been a heck of a lot more good corporate citizen if you had included some of those much lesser people in that pool and taken a chance with them?

Mr. STAFFORD. Well, we do have—as I mentioned before, it is a pharmaceutical plant, and there are certain standards which we must maintain. I have to say, apparently, the local people made that judgment.

Mr. MARTINEZ. Well, you've said that a couple of times. But let me interrupt you here. There are other plants, similar to plants, Sherman-Powell, in Puerto Rico, too, and they have a different policy. They have taken some people who would have ranked below this pool that you selected, and put them to work and trained them on the job. And some of them have gone up the corporate ladder there. We visited there, and I spent quite a bit of time talking to those people.

Now, that is really an ideal corporate citizen. You're familiar with them, aren't you?

Mr. STAFFORD. Certainly, they are a very fine company. And if we do use the JTPA funds in the future, in connection with any agency that administers them, we will certainly look into the question of whether we can take people who would fall into lower categories of either education or economic circumstances where that would be possible and still be consistent with our requirement of maintaining high standards of production and quality in our company.

Mr. MARTINEZ. Thank you. I yield back.

Mr. LANTOS [presiding]. I just have one question: We have explored earlier these 10 chemists who were never hired, I understand, but a contract for them was executed. My colleague read the preamble of the act, Mr. Stafford. The act is aimed to helped youth and unskilled adults. Now, do chemists with a bachelor's degree and a chemist's license fit either of those categories?

Mr. STAFFORD. Well, I don't know about the youth part.

Mr. LANTOS. "Youth" means teenagers, or unskilled adults.

Mr. STAFFORD. Certainly, they wouldn't be unskilled, although, as I say, I am personally a little new to this whole program, but I'm learning maybe a little more about it than I expected that I would have had to a couple weeks ago.

But the economic disadvantage criteria, I had understood, and perhaps I had understood from Congressman Martinez' comments, is very important and perhaps paramount. And it is possible that you could have, certainly, in Puerto Rico where education requirements—you can achieve a fairly high level of education for very low cost, if you're a Puerto Rican, and there are a lot of people there who are well educated.

Mr. LANTOS. I understand that.

Mr. STAFFORD. But they are economically disadvantaged.

Mr. LANTOS. That's not the issue.

Mr. STAFFORD. Well, that could be, in this particular instance.

Mr. LANTOS. But there are degrees of economic disadvantage.

Mr. STAFFORD. Well, all of the people we got from ADT were below—we were told were from a pool that was below the poverty line, from households below the poverty line.

Mr. LANTOS. By definition, if you are unemployed, you are below the poverty line. So that begs the question.

Mr. STAFFORD. From a family, I think, from a household that was below, not just the individual, from the household. But I certainly understand your point, Congressman, that when we initially identified chemists, that it may have been that there was a possibility that that would not be a pool of people—it wouldn't be within the pool of people that ADT had, chemists who would be economically disadvantaged.

And, in fact, there never were any cliques. There never were any people, and we amended the application, and that was deleted. And no persons were ever hired in that category. No funds were ever expended with respect to that. But I certainly understand your point.

Mr. LANTOS. Do you agree with my point?

Mr. STAFFORD. Well, I would have to look at—go back and really review that with Mrs. Flores.

Mr. LANTOS. Well, you just said that you have studied now this issue carefully, the last few weeks.

Mr. STAFFORD. Right.

Mr. LANTOS. Do you think it is designed for people with a bachelor's degree in chemistry, who are bilingual and have a chemist's license? You are a very intelligent person.

Mr. STAFFORD. We were unable to hire anybody in that category.

Mr. LANTOS. I didn't ask you that. I didn't ask you that, Mr. Stafford. You are under oath. You are a very intelligent person, and you can answer my question directly. So let me repeat the question, and you will answer it any way you choose, but I want to ask you to listen to the question.

Do you think that the intent of this legislation was designed to assist the employment of individuals who have a bachelor's degree in chemistry, a chemist's license, and are bilingual?

Mr. STAFFORD. Well, from everything that you have said, I would say, no, that is not the intent. However, as a person who has—does have a legal background, who has done a lot of investigation into legislative history, perhaps it's not always so easy to discern what exactly the intent of Congress was when they passed an act.

But I certainly will accept your characterization of the intent of Congress that it did not intend to have highly qualified people. But that's about as far as I could go, because I'm not going to second-guess the people in Guayama, who I think were trying to do a bonafide good job here in a partnership program with the local agency.

Congressman Martinez, do you have any further questions?

Mr. MARTINEZ. Thank you. Yes, Mr. Chairman.

Mr. LANTOS. Yes, please.

Mr. MARTINEZ. For Mr. Stafford, I just have one, then I'd like to get into a dialog with Mrs. Flores.

When you look at the sheets of—and there were some charges of—I don't think we really spent a lot of time on it the last time—about the number of hours spent for training, let's say, on machines that were similar in nature, and it shouldn't have taken that many hours on that machine, since they have learned the one machine already. But I don't want to get into that.

But there was one that really caught my attention, and I think you somewhat might have explained it earlier, but I'd like you to elaborate on it, because it still remains a curiosity here. Compensation and benefits, 12 hours, what is that all about? I mean, it wouldn't seem to me that you would need 12 hours of instruction to explain to a person what wages they are going to get and what benefits they are going to get.

Mr. STAFFORD. Well, on that one, if you will permit me, I will defer to Mrs. Flores, since she administers these and works with these programs on a day-to-day basis. And then I'd be happy to——

Mr. MARTINEZ. Well, all right. You're not familiar with that, then?

Mr. STAFFORD. Well, I've discussed it with her, and I certainly am familiar with our corporation's benefit programs. And I think, to take a person from scratch and bring them up to speed, a day and a half's time to explain it to them would be minimal; minimal, not too much.

Mr. MARTINEZ. The reason that I thought you might have——

Mr. STAFFORD. I think it would be minimal. We have quite—our benefits program is quite extensive and fairly complicated. And you have to remember that these people, while they had high school educations, are not sophisticated——

Mr. MARTINEZ. Are there stock options in there?

Mr. STAFFORD. Stock options would not be available to these employees, although stock options are available on a very widespread basis in our company, all exempt employees receive stock options.

Mr. MARTINEZ. Mrs. Flores.

Mrs. FLORES. Oh, yes. We have to go back to the context. This is a brand new plant, and it's a startup. OK. So, basically, everybody is learning together.

In terms of the benefits that we presented to these employees, who, some of them, may have never had these types of benefits in their whole life, we're talking about short-term disability insurance; we're talking about long-term disability insurance; we're talking about regular health insurance; we're talking about a dental plan; we're talking about a prescription plan; we're talking about a pension plan; we're talking about payroll deductions; we're talking about U.S. Savings Bonds, and, I mean, the list is really——

Mr. MARTINEZ. But it really takes 12 hours?

Mrs. FLORES. Yes, it does. Yes, it does, because, remember——

Mr. MARTINEZ. Do you test them at a period in time, through the 12 hours, to see if they have absorbed all this?

Mrs. FLORES. No, but the questions and answers we keep getting over the time. I mean, most of these booklets are in English. You do have to go through the translation——

Mr. MARTINEZ. Oh, they are in English?

Mrs. FLORES. Most of them, yes.

Mr. MARTINEZ. So you're translating? Because that's the one thing that Mr. Stafford alluded to about employees who are not bilingual. Most of the people in Puerto Rico are bilingual, but for those that are not, you know, it's going to take a longer time to make a translation, simply from the comprehension aspect of it.

Mrs. FLORES. Sure. And then they have to fill out the forms, either accepting or rejecting.

Mr. MARTINEZ. Now, this is a standard that the Department of Labor sets; right, the 12 hours?

Mrs. FLORES. No.

Mr. LANTOS. Excuse me, if I may interrupt, my friend.

I understood earlier, Mr. Stafford testified under oath that the people had to speak English.

Mrs. FLORES. They speak some English, but you must understand that these insurance programs are really very technical. So, even a person who understands English has to dedicate some time—to be explained clearly.

Mr. LANTOS. Not very persuasive, what you're saying. Just not very persuasive, in view of his testimony that they had to speak English to work in the plant, because the manuals are all in English. Those manuals are a lot more complex than the list of benefits.

Mrs. FLORES. I am not a good example of the fluency.

Mr. LANTOS. I'm not talking about you. I am talking about the issue.

Mrs. FLORES. The employees, yes.

Mr. LANTOS. And it's not persuasive; your argument is simply not persuasive.

Congressman Martinez.

Mr. MARTINEZ. Mr. Chairman, to add to the chairman's argument there, on the same work orders that they filled out——

Mr. MACHTLEY. Excuse me. On that point, would the gentleman yield?

Mr. MARTINEZ. Just 1 minute. Let me make this point, and it might help you in whatever you're going to allude to.

In the same work orders, or time sheets, you have for a machine operator—now, that position was packager-machine. Now, for machine operator, you have compensation and benefits, 5 hours. Why the discrepancy between 5 and 12, because it's over half?

Mrs. FLORES. Yes.

Mr. MARTINEZ. It's 7 hours more. Why would—is the wage and benefit package—the wages may be different, I understand, but the benefit package is not the same for the machine operator as it is for the packager and machine operator?

Mrs. FLORES. No, sir. All of them received over 12 hours of training in benefits. But, in order to allocate the hours of training according to the hours approved, some of them had more hours than others.

Our intent, by putting all those orientations on there, was to let ADT know that we were not only going to do on-the-job training with these employees; we were also going to educate them, in terms of their benefits, in terms of the company policies, in terms of the company rules, because the success of these people would not only be to operate equipment. If they didn't follow the company safety rules, they would get fired, too.

So we wanted to present a whole, comprehensive training program for these employees.

Mr. MARTINEZ. Well, you know, you have, besides the hours for the wages and benefits, you have personnel policies.

Mrs. FLORES. Yes, yes.

Mr. MARTINEZ. Another 13 hours on one side, and only 5 hours on one side.

Mrs. FLORES. It's the same.

Mr. MARTINEZ. Here, again, I would imagine that the personnel policies are going to be the same for the machine operator as they are for the packager-machine, any individual.

Mrs. FLORES. Yes, they are. Yes, they are. We allocated less hours——

Mr. MARTINEZ. Well, they are not on the sheet. On the sheet, there is 5 hours for the one and 13 hours for the other.

Mrs. FLORES. We allocated less hours in the training outline to be able to add up the hours to the 480. So I gave them 12 hours of training, and ADT matched 5 hours of training.

Mr. MARTINEZ. OK. All right. I don't think we can sit here and second-guess you as to the hours needed, but I would like to really see that program and see if it is really—but that's going to lead into the next question I'm going to ask after I've yielded to Mr. Machtley.

Mr. MACHTLEY. Thank you.

There is a question I think we need to have clarified for the record so there's not any controversy. I understood him to say certain employees had to have English. Can you clarify for us whether you said every employee had to have English, or it was desired, or certain employees? What is your position on that, because there seems to be some controversy here?

Mrs. FLORES. Well, it's basically desired, you know. The levels of fluency fluctuate greatly.

Mr. MACHTLEY. I yield back.

Mr. MARTINEZ. Thank you.

I am extremely interested, and always have been, in the level of technical assistance that any State gets, and Puerto Rico also, so I want to ask you what level of technical assistance has the Puerto Rican Department of Labor and Human Resources received from the United States Department of Labor? Have you received—in other words, what level of it? Have they been available as you have needed them through these programs?

Let me go through a list of things that I'm concerned with. Do you believe that the amount of assistance you have received is adequate; in particular, to this program? Let me tell you why. I remember, as a subcommittee with oversight jurisdiction, that we had to take the time on the request of, at that time, it was Baltazar Corrada, to visit there to talk to the Department of Labor in Puerto Rico, because they were not receiving the technical assistance and help they needed from the Department of Labor.

Has that changed? Are you now receiving an adequate amount? How frequently do the U.S. officials from the Department of Labor visit you, look at the programs you're doing, and give you oversight and technical assistance?

Mrs. FLORES. In terms of the ADT proposals, we got monthly visits.

Mr. MARTINEZ. You did get monthly visits?

Mrs. FLORES. Yes, yes we did.

Mr. MARTINEZ. OK. Do you feel that it's adequate, the amount of time?

Mrs. FLORES. Yes, yes, more than adequate.

Mr. MARTINEZ. Let me ask you, then, the last question. I'm sure that you've looked at the new JTPA amendments—I hope you have anyway.

Mrs. FLORES. No.

Mr. MARTINEZ. You have not?

Mrs. FLORES. No.

Mr. MARTINEZ. If you would like, we'll supply you with what is coming out of the committee so that you can come up to speed very quickly.

Mrs. FLORES. I would appreciate it.

Mr. MARTINEZ. I wish you had been looking at those, watching, because I think there's a lot of improvements that will resolve some of the problems you've had in this situation.

Here again, let me finish my time out by saying, when you have to choose from the poor and the poorer, it's difficult. But I would hope that, at least in the consideration of those that are less educated, who have less of an opportunity, that somewhere, in some of the companies that we're enticing to go into Puerto Rico by advantage of that tax exemption they get for moving and the other things they are able to take advantage of—because I understand you actually pursue the ability to give on-the-job training benefits to companies, you know, as a help and incentive for them coming down, and we want you to do that.

We also want to—what we said earlier—I have been one of the champions of fighting for the reauthorization of the JTP because I believe in it, because I think it can help both the companies and the people that they hire. But I think that we need to be very careful, under the program, who we're serving. The new amendments do require more than one barrier, which would eliminate the problem you're in now.

But, also, my concern is that in these things we've done—I know these things can be accomplished everywhere else in the United States, and they will probably be able to do the same kind of a job, even maybe better, but, in Puerto Rico, like I said before, it's kind of a unique situation—and my concern is, will you be able to, with those new amendments, still be able to place people with companies like Mr. Stafford's? Is that going to become more difficult for you to place people?

Mrs. FLORES. Yes, I suppose so. It's a very tough business decision, when you have a lot of qualified persons seeking for jobs, to go down and not select the best qualified, as you have always been taught to do.

Mr. MARTINEZ. I can see that.

Mrs. FLORES. It's a very competitive market. We have to be on the tip of our toes, and we do have to produce the highest quality at the least cost in order to maintain business.

Mr. MARTINEZ. You understand where the chairman, Mr. Lantos, is coming from? Because for years now we have been seeing abuses, and we had GAO studies that have shown abuses, both creaming and discrimination, that have taken place in the way the program has been used to this point. And we very desperately needed to correct those things so that it can provide more help.

Actually, one of the biggest problems, and we still haven't overcome that, is the fact that all of this only reaches about 3 percent of the eligible population. And I imagine in Puerto Rico it's the same thing, maybe—I think I saw a figure, 4 to 5 percent?

Mrs. FLORES. I don't know.

Mr. MARTINEZ. So it is difficult, and so we don't want to deter people from taking advantage of the program. At the same time, we want it to serve the way it was supposed to serve. Hopefully—it's a little bit too late to address that particular aspect of it in the amendments that are going through now, but, as we move forward, I would hope that you would keep us apprised of how it does affect your ability to do the job down there and advise us if we may need to do further amending of the act, in regard to how it affects Puerto Rico.

Mrs. FLORES. I would be glad to.

Mr. MARTINEZ. I'll tell you somewhere else which is not too far from the situation in Puerto Rico, as far as we serve Native Americans. JTPA has never adequately served Native Americans in this country. Some of the amendments we have included will go a long way toward achieving parity for them, not to the extent that I really believe needs to be done, but we do what we can. So good luck to you.

Thank you, Mr. Chairman.

Mrs. FLORES. Thank you.

Mr. MARTINEZ [presiding]. Oh, the chairman is gone. I'm the chairman.

Mrs. FLORES. Thank you, Mr. Chairman.

Mr. MARTINEZ. I want to thank you very much.

Mr. Machtley, excuse me.

Mr. MACHTLEY. Thanks very much.

In our previous panels, we had some very difficult testimony because of the impact on people who had previously worked at your facility in Elkhart, IN. And the allegations, I think, were very clear in that testimony that the company had used JTPA funds as a way of moving their plant out of Indiana.

And the sum and substance of what I heard at least was that this use of JTPA funds and the use of inflated job assistance programs by using excessive hours to train custodians and others was, in fact, a type of conspiracy on the part of American Home Products to move jobs out of this country and to move them to foreign soil. I think my colleague has spoken very pointedly on this issue. We ought perhaps not to look at Puerto Rico as foreign soil and consider the issue here separate from moving to other countries.

Now, in the testimony, Mr. Stafford, that you presented to us today, you answer that charge with the statement that says, "by saying directly and unequivocally that we did not move from Elkhart, Indiana, to Guayama, Puerto Rico, because of JTPA funding or anything that dealt with that issue." And you then go further to say that this issue has been litigated, and you gave us a copy of that court decision, which was the District Court in Indiana.

I have quickly read through that District Court opinion, which was Case No. S–91–50–M, and it was not clear to me that that specific issue was part of the litigation, as I read that issue, yet your testimony indicates that. Can you clarify for me, was, in fact, this

issue raised at the—I assume this was a motion for summary judgment—was that issue raised in that case, and does this memorandum and order deal with that issue, from a judicial standpoint?

Mr. STAFFORD. I don't believe it deals directly with JTPA. What it deals with is when we made the decision to close the Elkhart plant. The suit involved an action against us for a violation of the WARN Act, which requires you to give 60 days notice before you close a plant.

Well, of course, it was important for the court to determine, as a factual matter, when we made the decision to close the plant, and the court determined that we had made that decision long after the JTPA funding had been completed, long after the Guayama plant had been built and in production. And the two things really—the closing of the Elkhart plant really had nothing to do with the use of the funds. That's really what that decision related to.

And there really was no relationship, either in terms of timing, or, as I hope I pointed out, in terms of the incentive, since the incentive of the JTPA funds in Puerto Rico was quite small in relation to the cost of building the new plant there and the cost of closing down the Elkhart plant, which was quite substantial. There was no relationship.

But I think what the court was addressing was when we made the decision to close the Elkhart plant, and he found it to be much later than had been alleged in the case and much later than has been charged here.

Mr. MACHTLEY. Well, that timing, although you're talking in generalities, I think that's critical to the issue. Can you be a little more specific, or can your general counsel help me, how does that timing that they determined preclude the allegation that——

Mr. STAFFORD. Well, I can tell you that we were first contacted by the ADT personnel in early 1988, and we signed the contracts in June 1988. We completed all of that activity by March 1990, involving the ADT Whitehall contacts with respect to the JTPA funds.

Now, the timing of the closing of the Elkhart plant was that the presentation was not made to us, even to consider it, until March 1990, in early 1990, and the decision was made to close it September 1990, and it was ultimately closed in November—December 1991. So we had applied for and completed the JTPA process by March 1990, and it was not until that time that the division came to us and suggested that, because of overcapacity, they wanted us to consider closing the Elkhart plant.

Does that help you?

Mr. MACHTLEY. I think it does. So, as a matter of law, then, a court has heard oral arguments or written testimony, looked at the facts, and what your testimony is today, based on this, is that a court of law has, at least at the district level, it could be appealed, made the determination that it was factually impossible for you to have used the JTPA funds as an incentive for your closing of Elkhart, IN.

Mr. STAFFORD. Correct. At the time we were using those funds, we had no—we were giving no consideration whatsoever to closing the Elkhart plant; just the opposite, because we had built the Guayama plant as a third plant, to be a supplement to both Elkhart

and Hammonton. And the case won't be appealed, because that has now been settled.

Mr. MACHTLEY. Now, was any other litigation or any other complaint brought relative to that specific charge that JTPA funds may have been used as a basis for your relocating, or is this the sole lawsuit at issue on that particular, specific——

Mr. STAFFORD. Well, I think that that was included as part of a lawsuit that was filed against us by OCAW in Puerto Rico. And that case, again, has been settled, and that settlement has been preliminarily approved by the court, and that is now in the process of working its way out. Assuming that things stay in place, that settlement will be completed; then that would end any litigation between us and any party with respect to the JTPA funds.

Mr. MACHTLEY. Well, it's unfortunate that we didn't have all of this together in 1 day, because, on the previous day, one could have left that hearing thinking of you as a very bad U.S. corporate citizen, having used JTPA funds to displace, obviously, hard-working American citizens. If there are other facts, I hope they will be presented by other people to demonstrate that you somehow did, but I conclude, from this case at least, that there was a factual determination that it was, if not impossible, certainly legally unlikely that JTPA funds were used in the thought process of relocating from Elkhart, as painful as it has been for Elkhart.

I would hope, if any of the other witnesses have any other testimony or facts that they can present to us, that they would subsequently present those to clarify the issues relative to this case, which I was not aware of at the time of their testimony.

Having then set that issue aside, in my mind at least, then the question comes up, as we have been talking today, as to whether or not you now, as a corporation going into Puerto Rico, did what was expected of a reasonably prudent corporation in availing themselves of a program the Federal Government has established. That is, obviously, a subjective determination based on the facts which are presented.

But I suppose the question has to be asked again, to try and pinpoint the issue here, have you ever received any notice from the Department of Labor or anyone else that you did anything inappropriate?

Mr. STAFFORD. No.

Mr. MACHTLEY. Has anyone associated with the JTPA program or have the officials reviewed all of your records? Did they approve all of your records? Has there ever been or do you know of any pending complaint relative to your involvement in the JTPA program?

Mr. STAFFORD. I don't think there is any pending complaint. And I understand that the Department of Labor has inspected, and I understand they have concluded, with perhaps one exception, that the training programs did not require further inquiry. But there may be some questions as to one instance, but I don't know the facts on that.

I also understand that there may be some question about whether three people of the entire group fell outside of the economically disadvantaged group. But, again, those are questions that are pending currently, so we really haven't had an opportunity—I don't

think Mrs. Flores has had an opportunity to get the questions and make a further response.

So I would say that it's a 98 percent clean slate, as far as I can see. I don't know whether other programs administered by the Department of Labor or State agencies get the same kind of microscopic examination that we seem to have gotten in our program. I hope they come out as well as we did, if they do get it. I doubt that all of them would.

Mr. MACHTLEY. Now, you have about 450 full-time employees at this facility; is that correct?

Mr. STAFFORD. Yes.

Mr. MACHTLEY. Of these 450, you have about 78, or had about 78 people who are involved in JTPA?

Mr. STAFFORD. A few have left. A few have left.

Mr. MACHTLEY. But for this JTPA fund and the program, is it my understanding that you would not have hired these people, or would you have hired these people?

Mr. STAFFORD. We would have hired people, but not these people.

Mr. MACHTLEY. That's my point.

Mr. STAFFORD. That's the distinction. No, these people would have come from circumstances where they would have had difficult getting past the Personnel Department screen because of their work history. They were working in agriculture. They didn't have experience in the pharmaceutical area.

Very high level of unemployment, as Mrs. Flores has said, there are a lot of people looking for jobs down there. It's very competitive. Normally, as a personnel officer, you're trained to take the very best. And, in this instance, we were moving down the scale, in terms of people. So these are not people who—this is not a group that would have been good candidates except for the program.

Mr. MACHTLEY. As a company, did you go out and solicit these people in the pool, or was your involvement to identify the job classifications and the criteria for each job classification?

Mr. STAFFORD. The latter, and the agency supplied us with the candidates.

Mr. MACHTLEY. Now, as I understand, the definition of "economically disadvantaged" that was in Mrs. Flores' testimony was——

Mrs. FLORES. Unemployed.

Mr. MACHTLEY. Page 7. "A person is economically disadvantaged if he or she was unemployed, with a household income below the poverty level." And these people met that category?

Mrs. FLORES. Yes.

Mr. MACHTLEY. Would it have been possible to have college graduates—I'm not familiar with the specifics—I understand from your testimony there is 31 percent unemployment—is, in fact, people who are unemployed, with a household income below poverty level, is that—in that area of Puerto Rico—is it possible, or probable, or likely that you would also have college graduates in that pool?

Mrs. FLORES. Yes, yes, very probable.

Mr. MACHTLEY. Why is that?

Mrs. FLORES. I could give you a good example. At the time, I would probably have fallen almost in the same. My parents have a third-grade education. When I graduated college, none of them were employed. So, yes, that is very possible. At the University of

Puerto Rico, college credits only cost $15 per credit, plus you get the Federal grants, and you get the local grants. So it could be very possible that someone does get a college degree while their family is in strict poverty level.

Mr. MACHTLEY. Well, as someone who has looked at the specific job market down there, are you personally aware of many college-degreed people who are unemployed?

Mrs. FLORES. Oh, of course, yes. It's not unusual. Yes, yes, it's a very—it's a very usual case.

Mr. MACHTLEY. And do these people fall into this classification of economically disadvantaged?

Mrs. FLORES. Yes, they could; sure.

Mr. MACHTLEY. Do they?

Mrs. FLORES. Sure.

Mr. MACHTLEY. From your observation?

Mrs. FLORES. Sure.

Mr. MACHTLEY. Do you know of specific cases?

Mrs. FLORES. Well, I gave you one of my own background. I don't have their backgrounds, but, yes, it could very possibly—I'm sure ADT people here, who interview people constantly, could give you better information on that background.

Mr. MACHTLEY. And, as a company, Mr. Stafford, you've testified that you felt that a minimum education of high school level was required. If you were forced to accept someone with a less than high school education, having determined that, in your mind, as CEO, you needed a high school education to comply with the job definition, would you then—would that be a factor, or a critical factor, in you saying whether your company would or would not be involved in JTPA programs?

Mr. STAFFORD. Well, I think that we definitely would have to take a look at that. If there are amendments being proposed to this program, I would guess at this time it would be the responsible thing to do to wait and to see what changes Congress believes are appropriate to the law, and then we'll take a look at it. But that's entirely possible. We do have an obligation to people who use our products. We have to accept the responsibility for what goes out the door, and we have to set some criteria. So we have to balance that. But I wouldn't want to go too far until after we see what the changes are going to be.

Mr. MACHTLEY. In this specific case?

Mr. STAFFORD. Well, I'm sure that we've had many people who have gone to work for American Home Products over the years with below a high school education who have done a terrific job. But, in this instance, where the local people were establishing the criteria, along with the management in Whitehall, they deemed it necessary to have persons of a high school education to work in the plant.

As I say, I don't want to sit here and second-guess their decision-making without further review.

Mr. MACHTLEY. Well, the question goes, perhaps, a little beyond just this specific hearing, but we have been talking a lot about the Job Training Partnership Act. As the distinguished chairman has indicated, we have to reach that balance between micromanaging and setting out broad guidelines. Now, we set out broad guidelines

in terms of the economic criteria for people, without dealing with whether they are nonhigh school or high school graduates.

The question is, at what point do we impact on the viability of a program by mandating that you must take a lower classification than what you, as the employer, may think necessary? And, if that is the case, in this specific case, if you had been told you must take X number of people who are nonhigh school graduates, would you have participated——

Mr. STAFFORD. In this case, we would not have participated.

Mr. MACHTLEY. Would you have participated in JTPA?

Mr. STAFFORD. No, we would not have participated.

Mr. MARTINEZ. Will the gentleman yield on that point?

Mr. MACHTLEY. Sure, be happy to.

Mr. MARTINEZ. Let me tell you something. It's very clear—I understand where your line of questioning is going. But understand this, in the question you just asked, would they take? If they wouldn't take, then they shouldn't participate or partake of the program, because the program was not designed for that kind of person.

Just to give you an idea, their requirements to the Department of Labor, for the proposal submitted by Mrs. Flores to the Department of Labor, was shipping clerk—shipping clerk. Now, here in the United States, we have a lot of shipping clerks and receiving clerks who have not had a high school diploma and who have not passed mathematical dexterity tests, but this is what they required for shipping and receiving clerk: High school diploma, mathematical dexterity test.

Hey, if the guy's got that kind of an ability, he shouldn't be participating in the job training partnership program because it wasn't designed for them. No. 3, janitor, high school diploma, reading skills in English. All right. I can understand that a janitor, in Puerto Rico, if you go into any public facility or almost any facility, even private facilities, you're going to find that the printing there, the writing there, is in Spanish. That's their language.

So a company doing business with a janitor, who only has to know about the duties that he has in regard to cleaning and in how to—can be easily printed in Spanish. It's required there. So why did he have to have English for a janitor's job? He didn't. And a high school diploma for a janitor's job. They hired 11 of those people.

Now, under the Job Training Partnership Act, the people applying for that job would have certainly been eligible for that program, and that's where they should have partaken of the program, but not with a high school requirement, you see. That's the idiosyncrasy of the testimony and what we're trying to put together here.

Mr. MACHTLEY. Reclaiming my time. And I agree with the gentleman precisely, and that is my point. If you're suggesting that they should have or that they must, and they look at their requirement and determine that they don't want less than a high school, then what they say is, "We're just not going to participate."

Mr. MARTINEZ. Fine. They don't have to.

Mr. MACHTLEY. And the Job Training Partnership Act will then be available for only people who can get low, menial jobs, not to——

Mr. MARTINEZ. No, that's the point at all, you see.

Mr. MACHTLEY. Reclaiming my time. I appreciate the gentleman's position, but I think we have to be careful—and I don't think this is the place that we debate whether or not they should have a high school education, but I merely am asking this gentleman, who is now a CEO, who has had 78 employees, whether or not, if he was forced to take nonhigh school graduates, having determined that he would need a high school graduate—whether that's valid or not, is not my decision to make, nor do I know anything—whether or not he would then participate.

His answer to me was that it would probably, in his mind, indicate they would not participate. And my point is precisely what the gentleman has said. That will have an adverse impact on those very people who we are trying to help who are economically disadvantaged. And I think we're both arriving at the same conclusion.

Finally, I would like to go to the issue of the amount of time—and this concerned me greatly when I first read it—that was being utilized to train people in custodial roles, and clerk roles, and in other areas. You don't need to be a Rhodes scholar in order to perform some of these functions, particularly where you already have a high school education, where someone is obviously highly motivated to do a good job because of a 31 percent unemployment rate.

Is it fair that you—can you comment on whether or not the standards which were established by the Labor Department and other agencies are just overgenerous? In your testimony, you talk about the need for janitors and custodial people to have the knowledge of dealing with various chemicals. But it still seems to me that the standard is fairly generous in terms of how much time it takes in order to train these people in what seems to me to be relatively simple tasks for people who would be motivated.

Mrs. FLORES. Well, we're talking about on-the-job training programs. We're not talking about formal classroom settings. And there is no simple job anymore in the United States or in Puerto Rico. All the jobs in the pharmaceutical area are highly regulated by different government agencies. So, yes, we want to employ people, we want to give people opportunities, but then we also have to answer to the Federal Government, like FDA, Food and Drug Administration.

You know, how was this person trained? How do we know this person is doing what has to do when he has to do it? And we have to prove that. So, no, the majority of the hours were very limited, and I would say that we spent at least twice the amount of on-the-job training before we considered ourselves comfortable with the person doing that particular operation. And we're talking about very sophisticated pieces of equipment.

Mr. MACHTLEY. Do you think that this on-the-job training not only permitted you to hire people you would not have otherwise hired, but has it somehow reached its objective of making these employable people for long-term employment?

Mrs. FLORES. Positively.

Mr. MACHTLEY. I mean, do you attribute the on-the-job training to that, or do you attribute it to the 31 percent unemployment, or

some other factor? In other words, are we getting our money's worth for what we're spending as taxpayers?

Mrs. FLORES. For the 78 participants, you got well over your money's worth, and they got the opportunity of their lives to work with a very good, stable employer.

Mr. MACHTLEY. I yield.

Mr. MARTINEZ. Mr. Chairman, I have a couple more questions.

Mr. LANTOS [presiding]. Please.

Mr. MARTINEZ. First, Mr. Stafford, what is the average wage of the employees in the facility in Puerto Rico?

Mr. STAFFORD. $19,000.

Mr. MARTINEZ. What was that in the plant in Elkhart?

Mr. STAFFORD. It was probably somewhat higher, but I don't have that exact figure.

Mr. MARTINEZ. Could you supply it to us for the record?

Mr. STAFFORD. Certainly.

Mr. MARTINEZ. Remember you're under oath.

Any consideration we make—and I'm not criticizing that consideration, because anybody that operates a business wants to operate it to the point that they're going to make some profit. There's nothing terrible about profit; it's what motivates us to work harder. The fact is, though, in certain conclusions that led people to believe certain things, we can justify those anyway we want by manipulating the facts to the extent we want to.

The fact is that the operation in Puerto Rico is less costly than the operation in Elkhart, and that had to certainly be one consideration.

Mr. STAFFORD. But the opening of the Guayama was not related to the closing of the Elkhart plant.

Mr. MARTINEZ. Yes, but the Guayama plant wasn't the size it is now. You extended that plant to receive more operation there. You're shaking your head no, but it says so in the testimony here, that that plant in Guayama was expanded.

Mr. STAFFORD. We expanded the other pharmaceutical plant that we have there. But, in terms of bricks and mortar, I don't think we made any expansions at the Guayama plant since it was opened.

Mr. MARTINEZ. Well, see, that is one of the points that you can argue back and forth. But when you look at the criteria laid out here, and regardless of what my colleague believes, when you look at that criteria for employment that you laid out here, I do not believe what you say, that you would not have hired these same people for it. Because, if these people met that criteria, they certainly would have been eligible to work in those positions that you were seeking to fill there in that facility.

For any particular position that you had there in the proposal, I think—which is very high for a shipping/receiving clerk—high school diploma, mathematical dexterity test, bilingual education, driver's license. And in the area of janitor, high school diploma, reading skills in English. Maintenance mechanic, which, you know, is something that is a skill trained on the job with the equipment that you have to have there, you have to have an associate's degree in mechanical, electrical, or electronics, or vocational equivalency.

On the chemist/pharmaceutical, understandably, you require a B.S. degree in chemistry. You never hired any of those people, but that was a requirement. They probably didn't come up with anybody for that.

You have quality control coordinator, associate degree in pharmaceutical science or related field. I think all of these people, in the criteria you set down, if they had brought people to you that could fill that bill, you would have hired them regardless of whether you got the benefit of the Job Training Partnership Act.

The fact is that, with these requirements, these people, I think, would have easily found employment themselves, and those are not the people, as I read to you the intent of the law, we intended to serve. Just not. And that is the point—not that you were illegal, but that the whole program was misinterpreted somewhere along the line.

I would imagine that you, as an attorney, should have read and understood the law, and read the whole law and understood what the intent of the law was in advising your company whether you wanted to engage in that program or not. There's nothing that forces you to involve yourself in the program. The program is strictly voluntary.

If you want to be a good corporate citizen, you want to find those people that are really disadvantaged, really disadvantaged, not people that—of course, here again, you have to take into consideration where it is, in Puerto Rico, I understand that. There are people who possibly can have degrees in Puerto Rico who are still disadvantaged because they're not employed, and they themselves, their families, may have sacrificed to get them the education, but, as a family unit, are very disadvantaged.

We take that into consideration, but, still and all, the family that sacrificed that way, and the young man that sacrificed that way to get the education, young man or woman, they would have gone on to find employment. That's not what the bill and the program was targeted at. That's a definite. I've read to you from the law, and, more clearly, I'll read to you from the law, as amended, if they are approved, and I think they will be.

But it's targeted groups. Not less than 60 percent of the participants in the program under this part, in each service delivery area, should be individuals who, in addition to meeting the requirements of subsection A, which are the disadvantaged, are included in one or more of the following categories.

In other words, these people have to meet one or more of these categories. In fact, I think we've changed that to two or more. This is an old reading. But it's basic skill deficiencies, school dropouts—none of these people were school dropouts—recipients of cash welfare payments—I don't know how many of them were on welfare—offenders, individuals with disabilities, or homeless.

There are lot of people that can be served by this program, and we don't need to be serving the people who, by this outline here, already have a lot of qualifications.

Mr. STAFFORD. I think, if they were below the poverty line, they would probably have been receiving food stamps or other welfare assistance, so they probably would have qualified under the law. That would just be an observation, Congressman.

Mr. MARTINEZ. Not necessarily. There are a lot of poor people who will struggle out an existence, especially among the Hispanic community, will struggle out an existence without asking for 1 penny in handouts because of the pride they have.

Mr. STAFFORD. That may well be the case.

Mr. MARTINEZ. Mr. Chairman, I yield back the balance of my time.

Mr. LANTOS. Our chief counsel has a question.

Mr. WEISBERG. Mr. Stafford, let me just focus briefly on the events in April 1992 in Mason, MI. I recognize there's a dispute, a factual question, as to who blew the whistle on the sham, whether it was the union or company officials.

But, looking at the best-case scenario, from the company's perspective, and looking specifically at your written testimony, a job referral company approaches your plant manager and in effect says, "Have I got a deal for you. I can get you job training funds for the employees who transferred from your Elkhart, Indiana, plant. And, not only that, I can get it for you retroactively."

So we're talking about job training funds for employees from Elkhart, some of whom have worked in Elkhart for 20 years and had now been working in Mason, MI, for from 2 to 6 months. And what does the Personnel Department do? Did they call the police? Did they call the Labor Department inspector general? No, they go to the employees and require them to fill out the necessary job application forms.

I recognize that you've been reluctant to second-guess some of the decisions made by some American Home Products employees, but do you have as much problem with that initial action by the Personnel Department, the plant manager at Mason, MI, as I do?

Mr. STAFFORD. Well, I think that the personnel officer, under those circumstances, should have checked up the line. And, in hindsight, I would say probably checking up the line on that might have made sense. The agency who came to them, which was one of these brokers, which are not used in Puerto Rico, as I understand it, represented that they had permission to get this done.

But I think your question is a very good one, and it is our intention to modify our internal procedure manual, which will require our units to follow the form that we have for getting approvals on contracts, license agreements, expenditures of funds, and various things, anytime they seek a government grant or participate in a government grant program.

That way, not only the division headquarters—you understand this was in Mason. This was just a plant.

Mr. WEISBERG. Right.

Mr. STAFFORD. When they got it up the line, the headquarters people said, "No, that doesn't sound right. Go back and get a written proposal," and we never heard from them again.

I think I understand your question; I think it's a good one. And we're certainly sensitive to what happened here, and we will put in procedures which, hopefully, will obviate that. But, you know, everybody—you know, there are some humans out there who are trying to make these decisions day to day, and I'm sure it wasn't made in bad faith, but it may have been an error of judgment.

Mr. WEISBERG. Right. I think that's the problem in the program, in general. You do have a lot of companies which, when presented the opportunity for a free lunch, will jump at it without considering the consequences. Is this money that we justly deserve? Is this the best use of the funds? But, instead, hey, here are some Federal subsidies, in this case to train experienced, 20-year workers retroactively, and the initial reaction is to jump at it.

Thank you, Mr. Chairman.

Mr. LANTOS. I just have one more question, Mr. Stafford. Before I ask it, let me say that my praise for you personally and for the company does not encompass some of your lobbyists who are among the most overbearing and aggressive I have encountered, who are very counterproductive to the purposes of your company, who attempt to throw their weight around without having any.

I want to come back to the issue of the closing of the plant at Elkhart, IN, and the very moving testimony that I read to you. In your response you indicated the need for remaining competitive, and I, as a professional economist with a Ph.D. in economics, understand what it means to be competitive. Every company needs to be competitive.

The Japanese seem to be quite competitive, yet there is a degree of loyalty from the company vis-a-vis the employee that many, if not most, of our companies have not yet learned. While I understand that, if I would have been one of these employees at Elkhart, as this lady was who spent 25 years of her life with you, from the age of 19 to the age of whatever it is, 44, and be so dejected. Her life seems to me to have been shattered by this company decision.

I would like you to have displayed a greater degree of empathy and concern for that life and all the other lives that were so tragically crushed by a corporate decision. We are living in a society, as you know as well, Mr. Stafford, as I do, where most people in the working ranks are either parts of two-wage-earner families or many of them single parents, where the geographic mobility provided by telling them that they can move from Indiana to Virginia or anyplace else, is really not helpful at all.

These people are pretty much frozen in Elkhart, IN. They claim they have given the best years of their lives so you can have a big job, the company can make a lot of money, the shareholders can do well, but their lives are ground up in the process. I must say that, of all the responses you gave me, which were all very intelligent and responsive, this was the one that distressed me, because it didn't seem to reflect your recognition of the enormous anguish and suffering that this corporate decision resulted in.

American Home Products is not a marginal company. Had you remained in Elkhart, IN, you would be very much in business; you would be a very profitable company; you would be a very successful company. And those hundreds of American families who have given so much to your company would have been able to continue their decent, hard-working, honest lives as employees of American Home Products.

Words like "having to remain competitive," for a company with $1.1 billion profits is not convincing at all. This was a very cold-blooded, cynical, nonhumane decision. I grant you, maybe instead of $1.1 billion the profit picture would be only $976 million, but you

have got to put that comparison with what happened to the lives of all these people.

I find—and I certainly don't want to single out your company, which I stipulated earlier is a fine company with a good reputation—there is a social contract that keeps a democratic society together. Part of that social contract means mutual loyalties, loyalties between an employer and an employee, which has to go both ways.

There is a very dangerous phenomenon sweeping the American corporate landscape, as you know as well as I do, if not better, of viewing oneself not as an American company but as a multinational, global, international entity that takes advantage of being headquartered here but, in many ways, does not care about what happens to the working men and working women and their children, who make up this society.

Now, I don't necessarily expect you to respond to this, although you are free to do so, but I think this closing, which one of the employees who lost their jobs so graphically told this subcommittee, goes way beyond American Home Products and you personally. It reflects what the French call a crie de coeur, a crying out from the very heart of these people, who say, What's happening to us?

At age 19, we go to work for a fine company. We are part of a labor force that works 7 days a week, three shifts, through all the difficult years, displaying enormous loyalty, being told that the plant is not going to close down, and, boom, out of the blue, it does, and they are out in the cold. And families break up. People who used to think of themselves as middle class people, hard-working American men and women, find themselves unemployed, desperate, homeless.

And to say that you have to remain competitive is a mighty hollow response to their anguish. There is no doubt in my mind that everything you are now doing, wherever you're doing it, you could be doing in Elkhart, IN, even today. And you are not the only one who closed a plant. The American industrial landscape is filled with the corpses of American manufacturing facilities which, for whatever reason, were closed down.

So the green eye shade financial calculation cannot be the only criteria that influences corporate decisions. In the case of Elkhart, IN, I think American working men and working women really were punished for no sins of their own, none; it was a coldblooded, corporate decision which has destroyed the lives of families, not unlike your own. I think that there is a tremendous degree of humility that people like you, in top corporate positions, would need to display in approaching these decisions, which typically is not the case.

We have given up much of our industrial base. The story of your employee could be duplicated by the hundreds of thousands, by the millions. In some cases, it was a decision of the company surviving or not surviving, but in many cases it was not. I feel very strongly that, in recent years, the balance has swung far too much in the direction of looking at short-term corporate balance sheets and ignoring the wreckage of human lives which is left in the wake of these corporate decisions.

It really is more important than the job training partnership abuses, if there were any abuses. I've never met the people prior

to last week who appeared here, as you do, at the witness table, but they moved me enormously, because there was no doubt in my mind that every sentence in their testimony came from the heart. And they were crying out in anguish that their lives have been destroyed through no fault of their own.

You are free to comment or not, as you choose, Mr. Stafford.

Mr. STAFFORD. Well, I do take some issue with your characterization as to the decision being cynical and that my response did not address the needs and concerns of the people who lost their jobs. I believe the record will show I did elaborate on the actions that we took and that we do take when these decisions are necessary.

But, in terms of having personal sympathy and anguish for the people in these circumstances, or in any circumstances, who find themselves without work, that you can be sure I do have. However, it is still incumbent upon me, as the elected leader of this company, elected by the board of directors, to face up to ultimate decisions involving the operations of the company.

Some of these decisions, many decisions, are positive, from the standpoint of employee benefits, from improvements in the working conditions of our employees, and also, fortunately, some of the decisions involved building new plants, not only in the United States, but elsewhere in the world, although we do not manufacture outside of American territory for export back to the United States. In fact, this whole situation really resulted because we were bringing some production being done by a company in England back to Puerto Rico.

But I have great personal concern, and, if you did have the opportunity at any time to talk to people who know me, you will find out that I personally question when there's going to be a disruption of someone's employment, "Well, what are we doing?"

If we make either an acquisition or a disposition of a business because it doesn't fit within our business, not the closing of a business or a plant, but selling to someone, we insist on getting some provisions in the agreement which assures that the employees will be treated in a reasonable fashion.

When we acquired the Robins Co., we willingly accepted provisions in the agreement which obligated us to treat those employees fairly and responsibly and to bring their benefits, which were below ours, in some respects, up to the level of ours.

So, you know, not all the decisions are green eye shade, bean counter decisions of how can we save another buck. A lot of the decisions are spending money, and a lot of the decisions are long-term spending, such as investment in pharmaceutical research, for which the horizon is far beyond my tenure in this spot. So there are a lot of decisions that do take that into account, but some are not easy decisions, and some do require a decision such as the one made to close the Elkhart plant.

However, I will just add, without prolonging it, that: One, we had quite an extensive range of programs to make available both jobs, and we attempted to make available training to the employees, and two, the notice period we gave on the closing, was about 13 months, which is some 11 months longer than the WARN Act required, and also was significantly longer than the time period of notice for closing than had been requested by the then president

of the union in a discussion with our vice president for industrial relations.

When he indicated that the plant would need to be closed, he was asked, "Well, we need a certain period of time of notice," and our VP of industrial relations, in consultation with me, agreed to extend 13 months notice on the closing. So there was an attempt to alleviate the hardship, although I appreciate that, obviously, not all of that can be accomplished.

Mr. LANTOS. Well, I want to thank you and your associates for your testimony, Mr. Stafford.

Mr. STAFFORD. Thank you very much, Mr. Chairman.

Mr. LANTOS. Our next witness is Ms. Ileana Echegoyen, president, Occupational-Technological Development Council of Puerto Rico.

Would you please come up to the witness table.

[Witness sworn.]

Mr. LANTOS. Please be seated. If you will, kindly identify the gentlemen who accompany you, Ms. Echegoyen, I would appreciate it. Your prepared statement will be entered in the record in its entirety, and I will ask Congressman Martinez to take the chair.

Mr. MARTINEZ [presiding]. You can go ahead.

STATEMENT OF ILEANA ECHEGOYEN, PRESIDENT, OCCUPATIONAL-TECHNOLOGICAL DEVELOPMENT COUNCIL OF PUERTO RICO, ACCOMPANIED BY VICTOR CORTEZ, VICE PRESIDENT; AND FRANCISCO PAVIN, DEPUTY DIRECTOR AND GENERAL COUNSEL, PUERTO RICO FEDERAL AFFAIRS ADMINISTRATION

Ms. ECHEGOYEN. Mr. Chairman, members of the subcommittee, my name is Ileana Echegoyen. I am the president of Puerto Rico's Occupational-Technological Development Council.

Prior to April 1992 I was the administrator of the Puerto Rico Right to Employment Administration, ADT, which administers the JTPA program in Puerto Rico. I am accompanied today by Victor Cortez, vice president of the Council, and Francisco Pavia, deputy director and general counsel of the Puerto Rico Federal Affairs Administration.

When we were invited to this hearing, we were told that the subcommittee is interested in REA's contracts for OJT with American Home Products, which is 1 of 700 companies that have OJT contracts in Puerto Rico. My office has conducted a detailed study of the American Home Products contracts, and I want to assure you that these contracts comply with the regulations promulgated by the U.S. Department of Labor and ADT administrative memorandums which are approved by the U.S. Department of Labor.

The Guayama plant has employed many more workers than those trained with help from JTPA funds. We understand that its regular labor force totals over 500, and only 78 trainees were served by JTPA assistance. The fact is that the Right to Employment Administration has to actively encourage large companies like American Home Products to participate in the OJT program.

This program is not a powerful incentive to those companies. They would rather hire experienced workers and avoid all the administrative oversight that we require in the OJT contracts. The

fact that we are able to convince companies to train the economically disadvantaged for good jobs is a great success.

As for the hours of training provided in the OJT contracts with American Home Products, the length and nature of OJT training is determined pursuant to regulations approved by the U.S. Department of Labor. American Home Products submitted proposals to the Right to Employment Administration specifying the occupations for which it wanted to hire OJT trainees. Then ADT was required by regulation to determine the number of training hours for each such occupation from the Dictionary of Occupational Titles.

The DOT classifies occupations and specifies the minimum and maximum period of training for each. Most of the training subsidies that were given in the American Home Products contracts were for the minimum periods specified in the DOT. For example, for a shipping and receiving clerk, the Dictionary of Occupational Titles prescribes a minimum of 1,040 hours and a maximum of 2,080 hours of training.

The contracts between ADT and American Home Products called for the minimum number of hours. I have reviewed several specific cases with ADT program management, and I am satisfied that the training hours in the American Home Products contracts were appropriate.

The same phenomenon explains ADT efforts to subsidize the training of high school graduates. In Puerto Rico, 56 percent of our labor force population has a high school degree, but because of high unemployment it is very difficult for individuals with a high school education, or even a college degree, to find employment. They desperately need occupational training and job experience.

To understand the role of OJT, especially at plants like American Home Products, you need to know about the extensive work Puerto Rico is doing with high school dropouts, providing vocational training and other programs to help unskilled, economically deprived, unemployable people prepare for employment. But all this work is of no use if they cannot find work.

That is where OJT comes in. Work in a sophisticated operation like American Home Products is very desirable. Many qualified people want it. Our purpose was to obtain some of those jobs for people who could do the jobs and were in need of them and would not have been hired otherwise. All the participants we offered to American Home Products were below the poverty level and long-term unemployed.

I also want to assure you that the AHP workers in Puerto Rico were trained as provided in the contracts. Pursuant to the ADT internal procedures, an ADT monitor visited the American Home Products facility once a month during the duration of the on-the-job training contracts to ensure that the training was taking place as expected.

I am confident that the hard-working men and women who monitor on-the-job training programs in Puerto Rico do a very good job. I have reviewed the monitoring of the on-the-job training contracts at American Home Products, and I have not found any irregularities.

We in Puerto Rico respectfully suggest that our experience with JTPA provides an example of its success and of some ways the pro-

gram might be improved at the national level. Last week, Julian De La Rosa, inspector general, Department of Labor, testified that about 50 percent of individuals trained by the on-the-job training program lose their jobs within 4 months after the subsidy is discontinued. At the American Home Products facility in Puerto Rico, 78 individuals were trained under the OJT program, and today, almost 3 years after the subsidies were discontinued, 73 of these individuals are still fully employed. This is a success rate of better than 93 percent. The overall retention rate for OJT trainees in Puerto Rico is better than 75 percent.

Mr. De La Rosa also reported considerable problems on the mainland with brokering. Brokering has never been used in Puerto Rico, and we believe the program functions better when we administer and monitor the program ourselves.

Mr. Chairman, we believe that the JTPA program is a good program. We do not claim to be perfect in our administration of the JTPA program in Puerto Rico. We know there are ways in which we could improve our work, but it should be clear to the subcommittee that the job training program in Puerto Rico is administered pursuant to the law and that it has achieved a high rate of success in training needy individuals in Puerto Rico and keeping them employed, particularly at American Home Products' Guayama plant.

Thank you very much for your attention. I am available to answer any questions that the members may have.

[The prepared statement of Ms. Echegoyen follows:]

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STATEMENT OF
ILEANA ECHEGOYEN
PRESIDENT, OCCUPATIONAL-TECHNOLOGICAL
DEVELOPMENT COUNCIL OF PUERTO RICO
BEFORE THE
SUBCOMMITTEE ON EMPLOYMENT AND HOUSING
COMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

August 5, 1992

Mr. Chairman, Members of the Subcommittee:

My name is Ileana Echegoyen. I am the President of Puerto Rico's Occupational-Technological Development Council. Prior to April 1992, I was the Administrator of the Puerto Rico Right to Employment Administration (REA), which administers the JTPA program in Puerto Rico.

The JTPA program, in particular its "On the Job Training" (OJT), has been very successful in helping U.S. citizens in Puerto Rico pull themselves out of poverty. In 1983 Puerto Rico had an unemployment rate of 23.5 percent. It is now at less than 17%, which is still very high compared to the mainland. The unemployment rate for people between the ages of 20 and 24 is an alarming 31.5 percent. The island is highly urbanized; the population density is 1,027 inhabitants per square mile, producing many of same problems suffered in large urban areas on the mainland. We have made great strides in Puerto Rico's economic development, but these numbers clearly show that we still have a long way to go.

When we were invited to this hearing, we were told that the subcommittee is interested in REA's contracts for OJT with American Home Products (AHP), which is one of 700 companies

that have OJT contracts in Puerto Rico. My office has conducted a detailed study of the AHP contracts and I want to assure you that the AHP contracts comply with the regulations promulgated by the U.S. Department of Labor and the REA Administrative Memoranda, which are approved by the U.S. Department of Labor. The Employment and Training Administration and the Office of Inspector General of the Department of Labor also responded to the invitation by sending a team to investigate the AHP case at the REA. As Mr. Jones' written statement for this subcommittee reports in more detail, thus far the inspectors have found nothing to suggest illegality in the letting or administration of the AHP contracts. If the three cases subject to further investigation mentioned by Mr. Jones involve any irregularities, REA will correct them.

At the hearing before the Subcommittee last week two issues were raised about the legality of the AHP contracts. First, it was said that AHP may have "relocated" the production at its Elkhart, Indiana, plant to Puerto Rico. Second, questions were asked about the length of training provided in the OJT contracts. I will address each of these points.

The JTPA states in section 141(c) that "[n]o funds may be used to assist in relocating establishments, or parts thereof, from one area to another." To give effect to this provision, the REA has a clause (¶ 14 of the "General Provisions") in all of its OJT contracts whereby the company applying for OJT trainees expressly represents to the REA that

the facility where the trainees will work was not relocated from another area. In all four contracts between AHP and REA, AHP made such representation, and the following chronology of AHP's involvement in Puerto Rico and the closing of the plant in Elkhart, Indiana, demonstrates that the JTPA training did not occur in a plant that was "relocated" to Puerto Rico.

In 1988 AHP expanded the manufacturing operations of its Wyeth Division in Guayama, Puerto Rico, by building a new plant to make over-the-counter products. This plant presented important employment opportunities for Puerto Rico because the unemployment rate in Guayama was over 30 percent. The four OJT contracts that REA made with AHP to assist it in training ecor mically disadvantaged members of the Guayama community were all executed that same year; the most recent one was dated August 22, 1988. This was more than two years before AHP announced in Octobe: 1990 its plan to close its plant in Elkhart, Indiana, on November 1, 1991. All of the OJT contracts were completed before June 30, 1990. Thus the 78 workers had been trained with JTPA assistance and were at work as regular employees of AHP's Guayama plant at least four months before the October 1990 announcement and 16 months before the Elkhart plant closed in late 1991.

We understand that production continued at Elkhart for several years after the Guayama plant opened. Clearly, in 1988 when REA entered into the OJT contracts with AHP, the Guayama plant represented an expansion of AHP's production capacity, not

a relocation. There is no way that REA could have known, or would have had any reason to suspect, that the Elkhart plant would be closed more than three years later. The suggestion that REA should have made an investigation in 1988 to verify the AHP representation in its OJT contracts that it was not a relocating company is puzzling. I do not understand what REA could have learned at that time to cast doubt on this assurance.

I further understand that when the Elkhart plant was finally closed in late 1991, only eight percent of its operations was moved to Guayama, and 92 percent was relocated to areas with unemployment rates substantially lower than Guayama's. These areas are Richmond, Virginia (with an unemployment rate well under 7 percent in 1991) and Hammonton, New Jersey. (The unemployment rate in all of New Jersey in 1991 was 10.3 percent.) We do not understand why attention is centered upon the small fraction of Elkhart's production moved to Puerto Rico, particularly when, earlier that same year, AHP had closed its plant in Arecibo, Puerto Rico, putting 150 employees out of work there.

The Guayama plant has employed many more workers than those trained with help from JTPA funds. We understand that its regular labor force totals over 500, and only 78 trainees were served by JTPA assistance. The U.S. Department of Labor recommends a limit of 25 percent of a company's labor force on the number to be recruited as JTPA trainees. The AHP JTPA trainees represent less than 16 percent of its labor force.

As for the hours of training provided in the OJT contracts with AHP, the length and nature of OJT training is determined pursuant to regulations approved by the U.S. Department of Labor. AHP submitted proposals to the REA specifying the occupations for which it wanted to hire OJT trainees. Then the REA was required by regulation to determine the number of training hours for each such occupation from the Dictionary of Occupational Titles ("DOT") published by the U.S. Department of Labor. The DOT classifies occupations and specifies the minimum and maximum period of training for each.

Most of the training subsidies that were given in the AHP contracts were for the minimum periods specified in the DOT. For example, for a shipping and receiving clerk the DOT prescribes a minimum of 1,040 hours and a maximum of 2,080 hours of training. The contracts between REA and AHP called for the minimum number of hours. I have reviewed several specific cases with REA's Program Manager and am satisfied that the training hours in the AHP contracts were appropriate. Moreover, in an effort to limit the number of subsidized hours to make the most of the limited JTPA resources, the Private Industry Council (PIC) greatly reduced the periods for several higher-skilled jobs specified in the contract that it was required by local procedures to approve. AHP thereafter amended its proposal to eliminate all but one of the job categories requiring training in excess of the PIC's limit. Even though AHP had to pay the full cost of the additional training needed for the remaining

job category, the initial period of training subsidized with JTPA funds provided a vital incentive to AHP to recruit economically disadvantaged trainees lacking occupational skills and work experience. In an area of high unemployment, with a large pool of trained and experienced workers available, JTPA funds help to assure that employers will hire and train at least some of those who would otherwise remain unemployed.

The same phenomenon explains REA's efforts to subsidize the training of high school graduates. In Puerto Rico 56 percent of our labor force population has a high school degree, but because of high unemployment it is very difficult for individuals with a high school education, or even a college degree, to find employment. They desperately need occupational training and job experience. Nonetheless, REA devotes the majority of its JTPA funds to people with less education. Approximately 6,000 out of nearly 11,000 of the total population served by the JTPA program are economically disadvantaged individuals who have not completed high school, representing 54 percent of those served.

I also want to assure you that the AHP workers in Puerto Rico were trained as provided in the contracts. Pursuant to the REA internal procedures, an REA monitor visited the AHP facility once a month during the duration of the OJT contracts to insure that the training was taking place as expected. I am confident that the hard working men and women who monitor OJT programs in Puerto Rico do a conscientious job. Our review of

the monitoring of the OJT contracts at AHP has shown nothing that would undermine this belief.

We in Puerto Rico respectfully suggest that our experience with JTPA provides some examples of its success and of some ways the program might be improved at the national level. Last week, Julian De La Rosa, Inspector General, Department of Labor, testified that about 50 percent of individuals trained by the OJT program lose their jobs within four months after the subsidy is discontinued. At the AHP facility in Puerto Rico, 78 individuals were trained under the OJT program, and today, almost three years after the subsidies were discontinued, 73 of these individuals are still fully employed with AHP. This is a success rate of better than 93%. The overall retention rate for OJT trainees in Puerto Rico is better than 75 percent.

Mr. De La Rosa also reported considerable problems on the mainland with "brokering." Brokering has never been used in Puerto Rico, and we believe the program functions well without it.

Similarly, the General Accounting Office reported that two studies at the national level have shown that between 61 percent and 73 percent of the OJT contracts for lower skill positions exceeded the training hours stipulated by the Department of Labor. As I have explained, the training hours in the AHP contracts were well within the Department of Labor guidelines, and this is true of REA's OJT contracts generally.

Mr. Chairman, we believe that the JTPA program is a good program. We do not claim to be perfect in our administration of the JTPA program in Puerto Rico. We know there are ways in which we could improve our work, but it should be clear to this subcommittee that the JTPA program in Puerto Rico is administered pursuant to the law and that it has achieved a high rate of success in training needy individuals in Puerto Rico and keeping them employed, particularly at AHP's Guayama plant.

We applaud the subcommittee's interest in making the JTPA program more effective and efficient. We recognize that there are ways in which the program can be improved and we support many of the amendments that have been proposed in the pending reauthorization of JTPA. Furthermore, the statements of the Inspector General and of the GAO have shown some serious problems that need to be corrected, and we encourage this subcommittee to focus on these problems. Thank you very much for your attention.

Mr. MARTINEZ. Thank you, Ms. Echegoyen. The chairman had a list of questions which I'm going to ask in his stead since he has had to go out to a doctor's appointment. The first one is, did you first approach AHP for on-the-job training subsidies, or did they first approach you?

Ms. ECHEGOYEN. No, we went to American Home Products.

Mr. MARTINEZ. You went to American Home Products; they didn't initiate it?

Ms. ECHEGOYEN. Yes.

Mr. MARTINEZ. How did they receive the idea of entering into a job training partnership program?

Ms. ECHEGOYEN. I understand that they prepared some proposals. I really was not the person to approach American Home Products. They reacted preparing five proposals.

Mr. MARTINEZ. Let me clarify again, Mr. Cortez, what is your position with the agency?

Mr. CORTEZ. Vice president of the council.

Mr. MARTINEZ. Mr. Pavia.

Mr. PAVIA. I'm here in Washington with the Federal Affairs office here.

Mr. MARTINEZ. The problem that we have here, you have to understand, is that the way we envisioned the program—and sometimes we get a little parochial—We have a tendency to develop programs as they apply to the majority of the States, without any consideration of the unique circumstances that are in Puerto Rico. But some of these things, you know, we have to see that the way they are written, they have to be written that way.

Somehow we can see an application in Puerto Rico. Like I said earlier, when you have poor or poorer, who do you pick from? But I would have imagined if—because you have to certify the program; right?

Ms. ECHEGOYEN. Yes.

Mr. MARTINEZ. And that certification is to establish that they have carried out the intent of the program. That's part of the reasoning of the certification, having the certification, is that you, in your looking at the people that they hire under this program, that they're going to get a huge subsidy. $217,000 is not a little amount of money. It's almost a quarter of a million dollars.

Where the CEO may not think that that's not a major contribution to their overall operation, it certainly is. It certainly is. It helps defray a lot of their costs, and especially defray that cost in training these people.

But when you consider that, and you look at the people that they required under the qualifications that they presented you—I understand that you have a desire to help a lot of these people who have a high school diploma who are not employed. By the same token, do you ignore, then, the rest of the people that equally need that employment and training and that opportunity that don't have high school diplomas?

Ms. ECHEGOYEN. Well, let me—Puerto Rico has—the median education for Puerto Ricans is 12.8 grades. Also, 56 percent of our population, unemployed population—56 percent of our unemployed population has more than a high school degree. That means that, if we would not serve people with high school degrees, we are going

to discriminate against the main portion of our unemployed populations.

Mr. MARTINEZ. No, no. That's wrong. That is absolutely wrong. The bill doesn't discriminate against anybody when you say in the bill that you're going to target the most needy. That has always been the intent of the bill. The intent of the bill is not to provide for the—in this case, it would be the upper half of the lower half. The bill has always been intended to serve the very lower half of that lower half.

The question that the chairman has is, what rationale—and you just explained part of your rationale—did you have to enter a contract with AHP that had such high threshold requirements, which exclude all of those lower half of the lower half? In other words, all those people that don't—you say you have 56 percent who are high school graduates or better.

Ms. ECHEGOYEN. Yes.

Mr. MARTINEZ. But there are 44 percent that don't. What happened to the 44 percent? Because that is really the percentage that we were attempting to address in the bill, but they get completely ignored because the company, who wants to take advantage of this huge subsidy, sets the threshold job requirement very high.

Ms. ECHEGOYEN. Yes.

Mr. MARTINEZ. Like, for example, as I said earlier, for a janitor, a high school diploma with reading English skills, where in Puerto Rico you and I know that most places you go, in your government offices and everything else, everything is printed in Spanish. In fact, the instructions of employment are printed in Spanish. So why would you require reading in English for a janitorial position? I don't understand that. And then, of course, you had to go along with it.

There are lot of people that have been able to—low-skill people who would have been able to get that job from that lower half of the lower half.

Ms. ECHEGOYEN. On the other hand, if you just don't limit to the American Home Products program, and you see the whole program in Puerto Rico, the whole JTPA program in Puerto Rico——

Mr. MARTINEZ. Excuse me. I'm going to interrupt you there. Yes, we understand that the average percentages that you lay out here are very good for that area. But we're not talking about those, that other part of your program. We're only, in this case, talking about what appears to some of us an abuse of the use of the money, in dealing with a company who had a very high threshold for hiring, who, in their testimony, they say, "Well, we would have never hired these people."

I imagine, if you look at the profile, and I'd be very interested in further looking at the profile, of the 78 they did hire, and I'll bet you any money that the profile of that 78 they did hire was very high, out of the 166. Because they could have employed 166 people; they didn't do that, they only hired 78. And I'll bet you money that the profile of those people were people that they would have hired anyway.

Let me ask you this: You've got 56 percent of your population has a high school diploma or better, where else are they going to find

people except from that pool? And these 78 that they hired were from that pool. In fact, the whole 166 were from that pool.

Ms. ECHEGOYEN. These people they selected, although they have a high school diploma, they are economically disadvantaged and also they have no previous experience on the job. That's another reason that makes them really needy, that they really need the job, the training.

Mr. MARTINEZ. We know the unemployment rate is very high, especially among the 18 to 24 year olds. It's 30-some percent. We understand that. But that doesn't detract from the fact that the bill was not simply to clean off the unemployment rolls. We've never intended it to be that. We intended it to serve, sure, a lot of people who were long-term unemployed, people who had lost—who did not have the necessary skills to obtain a job.

See, that was the whole intent of the bill to begin with, and we seem to be ignoring that, or trying to ignore it, or create the idea or the illusion that there is such a great need, we had to take these people and neglect the others. The point is, and what I'm trying to explain is that the bill—if you look at the language, the report language and everything else—never intended to ignore those at the very bottom but to help those at the very bottom.

Now, here again, if another company—and I previously suggested I visited another company that does the same kind of work that didn't have that high criteria for entry employment, they have done it. As far I know, they're not taking advantage of the on-the-job training. I'm not sure, but I don't think, in my discussions with them, they were.

So why give the money to somebody who sets such high standards? Or even why not negotiate with them, say, "All right. You do need people because of the nature of your business, people at a certain level, and you can absolutely not fill certain positions without at least having that minimum requirement, why, for the shipping and receiving clerks and the janitors—which they hired 11 janitors and I don't know how many shipping and receiving clerks—didn't we bargain with them to accept some of those people at the lesser level, to try to get some of those people work, too.

Because, if we're concerned about people being employed, and with the great unemployment figure that you have, then we need to try to get a little bit from everywhere; in other words, spread it around.

Ms. ECHEGOYEN. They have some Federal standards and I really don't want to ignore them. On the other hand, when you negotiate a contract, you have to analyze it on the context, on the whole context of the whole program. Where you have other kinds of opportunities most in need—for example, you have classroom training programs in the area. You may have work experience programs in the area. And, also, you may have another OJT opportunity for those most in need in this same area, at the same time, that may give the opportunity to those most in need to have a job and to acquire a job.

Probably, you may have even the opportunity, if there is a person without a high school degree, it will be better, instead of finding for them an on-the-job training opportunity that will place him in a dead-end job, probably it will be better to give them some kind

of classroom training opportunity that will allow him or her to get a high school degree. And then you may find for him—give him an opportunity in an on-the-job training program in any other company that will be helpful for him.

Or even you may give him a high school degree later, another opportunity in a classroom that—to give him another degree, an associate degree, any technical degree.

Mr. MARTINEZ. Well, you're talking about things that we need to do, and there's no argument with that. In fact, the new amendments do address some ability to give basic skill training before they actually participate in other parts of the program. But that's not the point here. The point here is that—and I guess—let me put it to you very simply, as the chairman wrote it out, did you try to negotiate with American Home Products so that they would take some of the most needy needy, not those with that high entry level qualification?

Ms. ECHEGOYEN. To answer specifically that question to you, I'd have to go for further investigation with my technicians and ask them how the negotiation process occurred.

Mr. MARTINEZ. Actually, you weren't personally involved in the negotiations?

Ms. ECHEGOYEN. No.

Mr. MARTINEZ. All right. I understand. You don't have anybody here that was?

Ms. ECHEGOYEN. No, there's not anybody here who is a technician.

Mr. MARTINEZ. Do you have any policy, as the director, do you have any policy with those people that are negotiating contracts that say, hey, when you enter into a contract like this with one of these companies that you try to go for some of the very low education levels?

Ms. ECHEGOYEN. We have policies—our policy defines that we have to serve those most in need, and we define those most in need as the ones who have some barriers to employment. Although, our unemployment population is a well-educated unemployed population where more than half has more than a high school degree. We have general policies, and our program has to be directed to those most in need.

Mr. MARTINEZ. Well, you know, this is the whole question, who is served? Are the most in need served? And I would suggest to you—we will ask you to answer it in your own way, but, before you do, I would suggest to you that, to me, personally, the most in need are not the people that have a high school diploma that so many companies like this do require for them to gain employment when they have a better chance to, but the ones that don't have, the ones you just described a little while ago as needing more basic skill training, more advancement in education so they could be able to compete.

But right now, at the present, they don't have that, so the OJT was designed to get those people into the work force. That's what it was designed for. And you don't do it unless you do, specifically, when you enter into a contract with a company, require they do it.

But let me ask you—you say, with there being such great need there, let's establish that we all agree to that, there is such great need there. How do you determine who is the most needy?

Ms. ECHEGOYEN. We have—you have target groups to be—as defined in the act.

Mr. MARTINEZ. Well, we define that more clearly in the new act, which hopefully will get passed out pretty soon. But the fact is that maybe that's one of the idiosyncrasies of the original law that it didn't clearly define that to the point that it would be easier for people to define who were the most needy. I see, even in asking the question, it is very difficult for you to answer, who is the most needy. And I guess that's subject to some objectivity from the individual making the judgment.

Let me ask you this, because I asked it earlier of the personnel director for American Home Products, and they seemed to be feeling that they are getting technical assistance from the Department of Labor. I'd like to ask you, do you feel you get, in this particular area—this is the only one I'm really talking about right now—do you really feel you get sufficient guidance and technical assistance in this particular area?

Ms. ECHEGOYEN. Yes.

Mr. MARTINEZ. You do. So you believe it's adequate. And the individual from AHP indicated that they make frequent visits there, I think at least once of the month somebody from the Department of Labor—I assume she's saying your Department of Labor—someone visits the plant; is that right?

Ms. ECHEGOYEN. Yes.

Mr. MARTINEZ. In turn, how many visits from personnel in the Department of Labor to provide you technical assistance do you get from here on the mainland?

Ms. ECHEGOYEN. At least about five or six a year.

Mr. MARTINEZ. Well, that's not even as often as she gets visited by your department to them.

Ms. ECHEGOYEN. Once a month we visit AHP. We get visits from the U.S. Department of Labor at least five or six times a year.

Mr. MARTINEZ. Let me ask you another question that I asked her, because, you know, here again I go back to the time when Baltazar Corrada was on the Education and Labor Committee and so was Jaime Fuster. But Baltazar Corrada sat on the same committee, Subcommittee on Employment Opportunities. And it always was a concern of Baltazar and Jaime, too, that when we consider laws here we don't consider the unique situation of Puerto Rico.

There is one aspect of the targeting that we put in here, in trying to clearly define who should be targeted, so it would make it a lot easier for you, at a hearing like this, to be able to explain who is the most needy, we have written some provisions. Are you familiar with them? Have you looked at the new amendments?

Ms. ECHEGOYEN. Yes.

Mr. MARTINEZ. And are you in agreement with them? Can you operate with those?

Ms. ECHEGOYEN. Yes.

Mr. MARTINEZ. You can continue to try to serve and place the people you need to place with those conditions. Very good.

Let me ask you, on another subject, the other subject we were concerned with, the number of hours or maximum times that people allowed for different divisions. You indicate in your statement that you have allowed minimum training times from the Dictionary of Occupational Titles rather than maximum times. Now, for example, industrial janitor is allowed over 30 days, up to 3 months, and your contracts are for 3 months. How do you explain this?

Ms. ECHEGOYEN. The industrial cleaner?

Mr. MARTINEZ. Yes.

Ms. ECHEGOYEN. Repeat for me your question.

Mr. MARTINEZ. OK. You stated in your testimony that you allow minimum training time, minimum, less.

Ms. ECHEGOYEN. In most cases.

Mr. MARTINEZ. And you do that from the Dictionary of Occupational Titles rather than the maximum times that are described in those titles. But, according to the copy that we have here, contrary to that, you allowed maximum times for, one example, the industrial janitor. That position is allowed over 30 days, up to 3 months, and the contracts are only for 3 months. So that's absolutely maximum.

Ms. ECHEGOYEN. I have a chart—excuse me for a minute.

Mr. MARTINEZ. All right.

Ms. ECHEGOYEN. I have a chart where you could find the whole—the different occupations we offer. And the only case—there are two cases where we gave the minimum time, and it was the industrial cleaner and the packager operator. And it was mainly because they cover more than usually—it goes over the definition of the DOT code, in terms of the functions and the things these people are going to do in the plant.

In the case of the industrial cleaner, he has to deal with pharmaceutical products, much more chemicals than they usually do in any other kind of plant.

Mr. MARTINEZ. What you're saying is, the technical aspects of that particular job description, in that particular facility or industry is so much more extensive.

Ms. ECHEGOYEN. That's right. Is more extensive and more complex.

Mr. MARTINEZ. And the requirements of the law are much stricter, that you need to have that additional time.

Ms. ECHEGOYEN. Yes.

Mr. MARTINEZ. Let me ask you a question, because I asked it of the CEO from the American Home Products Co., or several people did, and he several times alluded to the fact that these 78 people, these 78 people themselves, had it not been for the program itself, they would not have hired these people, although these people they hired had very high entry qualifications.

Do you believe that these people would not have been hired? And I go back to what I said earlier, where else would he have gone for people like this? You know, what he did have is the ability, through your department, to really have an employment service provided for him to find the kinds of qualified people that they wanted, not the kind of people we're trying to serve in this program.

Do you really believe that the people that you provided him in that pool of 166, and especially the 78 that were hired, would really not have qualified for those positions, even without the program?

Ms. ECHEGOYEN. I really believe that, if we don't give the program to—with American Home Products—these people would never have the opportunity even to——

Mr. MARTINEZ. These people; we're talking about these specific 78 people.

Ms. ECHEGOYEN. These 78 people wouldn't have the opportunity to go to American Home Products for a job, mainly because they have no previous experience. When you have this kind of operation, it usually requires experienced people, people who—and they may go to any other company in that same area and look for an experienced worker, probably working at that time, and they will select their work force from those people.

Mr. MARTINEZ. When you say experience, are you talking about experience on the job, just working experience——

Ms. ECHEGOYEN. On-the-job workers, yes.

Mr. MARTINEZ [continuing]. Or experience in that particular industry?

Ms. ECHEGOYEN. Probably in that industry or in another company, working at that time, that will be very easy for them, since the payments are very good as compared to many other industries in Puerto Rico.

Mr. MARTINEZ. Well, we have to have a difference of opinion, unfortunately. I really don't believe that asking for the high school diploma and all of the other requirements that he asked for that they would have really required, especially in the industry, in Puerto Rico, you understand. There are not that many industries like that in Puerto Rico that you could easily gain—hire somebody with experience for that job, if he hadn't taken these people who did not have experience in that job.

I have to believe that, in Puerto Rico, the majority of the people that he would have hired without this program would have had no experience in that industry, even if they had had working experience in something else, which, in a lot of cases, in the kinds of jobs—especially for janitor and receiving and shipping, you really don't need a heck of a lot of experience to do that job. Most of it is on the job.

Every shipping and receiving dock in the United States or anywhere else really has its own system, and own way, and its own—what do you call the—bills of lading, and they all have to learn them as they go into that company. So I really believe that he would have hired them anyway, but he did get the advantage of the program.

Mr. Weisburg, do you have anything else?

Mr. WEISBERG. No.

Mr. MARTINEZ. Well, I want to thank you very much. And understand that I understand that you have a unique problem down there and a difficult situation. That's why I asked about the amendments. Really, if you believe that the amendments are going to hurt in anyway and there should be some special attention to them, you should have your representative, who is now Mr. Colo-

rado—make them aware of that so that they can make Congress aware of it as we deal with those issues in Puerto Rico.

I thank you very much for coming with us. Thank you.

Ms. ECHEGOYEN. OK. Thanks.

Mr. MARTINEZ. Roberto, come up here. I'm going to have to swear you in. The chairman requires that.

[Witness sworn.]

Mr. MARTINEZ. Do you think you can make a presentation in 5 minutes? They just called for a vote. Go ahead. If we have to interrupt you, I can wait about 7 minutes and get over there.

Mr. JONES. Well, I'm happy to follow your lead, Mr. Chairman. If you would rather just ask questions, that's all right. I'm happy to go through the——

Mr. MARTINEZ. OK. We can submit—I don't think it would be improper to submit your testimony for the record.

Any objections? There's nobody here to object.

Mr. JONES. I'm happy to summarize it in just 2 minutes.

Mr. MARTINEZ. Why don't you do that.

STATEMENT OF ROBERTS T. JONES, ASSISTANT SECRETARY, EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY DAVID WILLIAMS, DEPUTY ASSISTANT SECRETARY

Mr. JONES. Actually, there are two different things in the testimony. One is, we have attempted to, at the chairman's request, look at Puerto Rico. What is in here is essentially a status report, as we have seen it to date. We still have staff in Puerto Rico, and so does the inspector general, so we're not particularly in a position today to make summary judgments about what we have found in most of these areas, and certainly in questions like you've been raising this morning about the relative qualifications of some of the 78 people. We're going to tear that apart and look at it in more depth and do some other things.

But there is an outline of these kinds of issues. I guess the summary point I would make is one that has already been mentioned here, at least in terms of the Labor Department's view at this moment, until we finish our work. There doesn't appear to be the issue that would normally be raised, and we've had five cases over the course of time, of the funds being used as an incentive to move the factory, at least not as a prima facie case.

The second part of our testimony goes to most of the OJT issues that are generic to the whole program, of which you are very familiar, many of which we've been working on for 1 year or 2 in cooperation with not only the committees but with the inspector general and have legislation currently pending that affects almost every issue you have discussed here this morning and last week in the process.

It does appear, at least—and I really do urge you, since we're still in the midst of this process—what we have seen so far is that these contracts and processes seem to be within the guidelines in almost all areas. There are some questions about two or three of the individuals, as was mentioned. There is the question of the high school standard or the college standard that somebody might unilaterally put in there.

One of the things I would address your attention to, and questions are here; I think it's inappropriate for any of us to use that issue as a sole selector. We have just completed, a few months ago, and forwarded to the Congress a study of JTPA recipients that are coming in through our system. Over 50 percent of these people are at the lowest literacy levels, and about one-third of those are high school graduates.

The issue of high school graduates is not a determinant. The determinant should be high school graduate and what: Literacy, language, homeless, labor market experience, as you pointed out, some other things, not just the degree itseif. And I think that's the intent of the law. But it would be troublesome to us to ever see contracts that just blatantly use that as a single selector, or college, or something else.

I will just summarize it at that point.

[The prepared statement of Mr. Jones follows:]

STATEMENT OF
ROBERTS T. JONES
ASSISTANT SECRETARY FOR EMPLOYMENT AND TRAINING
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON EMPLOYMENT AND HOUSING
COMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

AUGUST 5, 1992

Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to testify before you today in connection with your investigation of the use of on-the-job training (OJT) funds under the Job Training Partnership Act (JTPA) and your specific interest in four on-the-job training contracts in Puerto Rico entered into under JTPA Title II-A programs which serve economically disadvantaged individuals.

On-the-job training works. Recent interim findings of a major National JTPA Study show that over an initial 18-month period adult women and men who received OJT (compared with those recommended for classroom training or other services) experience statistically significant earnings gains. While OJT is very useful, OJT is not designed or intended -- nor would we want it to be used -- as an incentive to relocate companies. I will return to this subject later.

You specifically asked us about the four OJT contracts in Puerto Rico. As soon as we received your invitation, we filed an incident report with the Office of the Inspector General, checked existing information to verify the contracts, and dispatched staff onsite (who are still in Puerto Rico) to review the

contracts and examine on a case-by-case basis the eligibility of the 78 OJT participants. We are doing this jointly with staff from the DOL Office of the Inspector General. Should there be any findings of questionable costs, they would be followed through our normal findings and cost resolution process.

Before we continue our discussion about these OJT contracts, let me briefly review some key events:

- o According to American Home Products, the parent company, a decision to open a new production plant in Puerto Rico was made in 1986. This plant, which is operated by Whitehall Laboratories, a subsidiary of American Home Products, opened in 1988, giving American Home Products the capacity to produce Advil in-house rather than under a contract with a company in England.
- o In 1988 JTPA funds in the Commonwealth of Puerto Rico were used to enter into four on-the-job training contracts with the new plant located in Guayama, Puerto Rico. All four contracts were scheduled to operate during the period of June 30, 1988 to August 30, 1989.
- o American Home Products announced in October 1990 that it would close the Whitehall Laboratories plant in Elkhart, Indiana on November 1, 1991. According to the company, this decision was part of company restructuring which resulted in the closing of one plant in Puerto Rico and two in Canada. It is our understanding that as part of this restructuring, 92 percent of the Elkhart production work was transferred to facilities in Hammonton, New Jersey and Richmond, Virginia,

and the remaining 8 percent was consolidated to manufacture Denorex in Puerto Rico.

Our review of the four American Home Product's Whitehall Laboratories contracts found that 78 individuals were trained and all were retained by Whitehall Laboratories after the training was completed. Of these, 73 persons currently are employed at the plant in Guayama. Under these contracts, the 78 individuals were trained as machine operators, maintenance mechanics, shipping and receiving clerks, industrial cleaners and machine packers.

These contracts provided for JTPA to reimburse Whitehall Laboratories for 50 percent of the salaries paid to the participants. For all occupations being trained for, with one exception which is now under further onsite study, our review found that the number of hours specified for length of training was appropriate and within the bounds of the guidelines for such training as contained in the Dictionary of Occupational Titles. The trainees were paid an hourly wage, ranging from $5.90 an hour to $8.34 which is comparable to the hourly wages earned by other employees in the plant in the same occupations. Our review of each of the four contracts showed that the contracts included assurances that all provisions of JTPA regarding OJT would be adhered to, such as safety and working conditions, worker's compensation, occupations targeted for training, length of training, training plans, and reimbursement.

In general, JTPA staff would negotiate with each employer the occupations in which training is to be provided, the number to be trained in each occupation, the wage of each occupation during the training period, the duration of the OJT period, the training plan to be followed, the rate of reimbursement and other matters specific to that employer. This is then incorporated into the contract for that specific employer.

The Right to Employment Administration (REA), the responsible agency for the Commonwealth of Puerto Rico, is responsible for monitoring local Service Delivery Areas REA monitors all programs, including 70J OJT contracts, by conducting desk reviews of fiscal data and performance reports. REA performs formal onsite monitoring of contracts on a sample basis. We are not aware of any onsite monitoring visits at Whitehall Laboratories in Guayama, Puerto Rico.

The Department of Labor is reviewing the participant records to verify eligibility requirements for OJT. Our preliminary onsite review of the first 55 of the 78 participant records shows that 52 participants were eligible, and 3 require further review. Three participants were trained in occupations in which they had prior work experience, and one of these three also worked in the same industry and possibly for the same company. Employment and Training Administration and Office of the Inspector General staff are further reviewing each of these applications onsite and continuing fact-finding for the remaining participant records.

Based on the results, appropriate corrective action will be taken.

Turning to the Whitehall Laboratories facility in Elkhart, Indiana, the Department received a proposal from the State of Indiana to serve 250 dislocated workers which would result from the closing of the Whitehall plant. On March 5, 1991, the Department awarded a JTPA Title III (Dislocated Worker Program) National Reserve Account grant in the amount of $516,000 to assist laid-off workers from Whitehall Laboratories. The grant period is March 5, 1991 to August 31, 1992. Skill training has been offered in such occupations as: general office clerk, receptionist, data entry, secretary, licensed practical nurse, auto mechanic, metal worker assemblers,truck driver, millwright, construction, accounting, drafting, welding, and computer assigned design.

According to American Home Products' May 4, 1992 letter, over 500 jobs at other plants in New Jersey and Virginia were offered to affected workers in Elkhart, Indiana. The Department's Title III grant also allowed for relocation assistance to be paid up to $500 per individual. In our monitoring of the project, we became aware of only one individual receiving relocation funds to move from Elkhart, Indiana.

We are aware that there have been some problems with OJT and its related procurement practices. Recent oversight and monitoring activities by the Department of Labor's Employment and Training Administration (ETA) and States included reviews focused

on OJT and procurement. Departmental staff conducted these reviews in all States and in nearly two-thirds of all local Service Delivery Areas (SDAs). With State assistance, reviews were conducted in the remaining third. These reviews identified problems similar to those identified in other studies, including:

- o Inappropriate occupations for training;
- o Training participants who were not in need of training;
- o Inadequate administrative policies or procedures for OJT and procurement; and
- o Use of OJT for people already hired by employers.

Following the reviews, ETA staff developed corrective action plans where warranted and spent months aggressively following up to ensure resolution of the findings. Except in those few instances where actual conflicts of interest or other potentially illegal activities were identified and referred to the Office of the Inspector General for investigation, all findings have now been resolved.

Nationally, ETA designed a procurement training package which included a component on OJT contracting. This training was delivered in five locations across the country during 1991 and included specific discussions about how to select occupations and participants for OJT and how to determine the proper length of training under OJT. ETA also funded the development of a series of monitoring guides for use by all service delivery areas (SDAs) in monitoring and reviewing their programs. One of these guides focused specifically on OJT. In addition, ETA has widely

disseminated the results of a study on the quality of JTPA training, including OJT.

We also recognized the need for and proposed legislative remedies. We are pleased that both the House and Senate have passed bills to improve and reform the Job Training Partnership Act which reflect our proposal. These amendments improve the targeting of JTPA programs to those facing serious barriers to employment, enhance the quality of services provided, promote coordination of human resource programs serving the disadvantaged, and strengthen fiscal and program accountability. In general, these features will help ensure that services are equitably provided to specific groups, particularly those with severe employment barriers, such as a lack of basic skills.

The legislation requires that each individual entering the program receives an assessment of skill levels and service needs and that a service strategy be developed to address individual needs based on this assessment. Where the assessment indicates a need, JTPA programs will make available the requisite basic and occupational skills training. Individual client data will also be collected to provide us with valuable programmatic data. These changes are particularly important to the larger issue faced by all job training programs -- identifying services that work best for various clientele.

We are confident that the provisions in both the House (H.R. 3033) and Senate (S. 2055) bills will specifically strengthen OJT by:

- Placing a 6-month limitation on the OJT training period, and requiring that the training period be tailored to the individual participant's education and employment history and JTPA service strategy and that the occupational training period match the recommendations in the Dictionary of Occupational Titles;
- Requiring each OJT contract to specify the types and duration of OJT and other services to be provided in sufficient detail to allow for the fair analysis of the reasonableness of costs and compliance with fiscal control requirements;
- Requiring each OJT contract that is contracted through an intermediary to specify outreach, recruitment, participant training, counseling, placement, monitoring, follow-up and other services to be provided directly by the brokering contractor, the services to be provided by employers conducting the OJT, and services to be provided, with or without cost, by other agencies and subcontractors; and
- Requiring a brokering contractor who enters into a contract with subcontractors to provide training or other services to ensure through on-site monitoring, compliance with subcontract terms prior to making payment to the subcontractor.

Moreover, the House bill requires the Secretary of Labor to issue regulations to ensure that OJT contracts be written only with employers who have a record of maintaining previous OJT trainees

in long-term employment under the same wages, benefits and working conditions as other comparably employed employees.

The Administration supports both the House and Senate JTPA bills, and we are looking forward to final Congressional approval before the August recess.

Returning to your inquiry about JTPA regulations that address the question of whether program resources may be used to encourage the relocation of an existing plant or other facility, I would like to cite the prohibition of any such use of funds in Section 141(c) of existing law:

> "No funds may be used to assist in relocating establishments or parts thereof, from one area to another unless the Secretary determines that such relocation will not result in an increase in unemployment in the area of original location or in any other area."

The relevant regulations on general JTPA program requirements found at 20 CFR 629.4 follow the statute, and, further, prohibit displacement of any currently employed worker, and prohibit the employment or filling of any job opening when another employee is on layoff from the same or similar job, or when the employer has terminated any regular employee or reduced the work force with the intent of hiring <u>any</u> JTPA participant. Actions to be taken by the Secretary of Labor with regard to alleged violations are explicit: prompt review by the Secretary, followed by either direct investigation or referral for State action.

Since JTPA's inception, we have received only four complaints about relocation issues, and we have investigated each of these alleged complaints. In two cases, there was no evidence to substantiate the allegations in the complaints. In the case of the Robinair Division of the Sealed Power Corporation relocation to Indiana, we believe there was substantial evidence of a violation and have referred the matter to the State for final resolution and asked them to report back to us on the actions taken. Because we had insufficient information to make a determination from our review of the Checker Motors Corporation relocation to West Virginia, we have asked West Virginia to provide us with additional information.

Mr. Chairman, this concludes my prepared statement. At this time I will be happy to answer any questions that you or other members of the Subcommittee may have.

Mr. MARTINEZ. That's great, because that's a good point. You know, you're right. The armed services spend millions of dollars bringing recruits up to a ninth grade reading level.

Mr. JONES. Unfortunately, that's true.

Mr. MARTINEZ. Because, even though they have the high school diploma, which the service requires now, they are practically illiterate. So that is a good point. And I don't know that it might necessarily apply to Puerto Rico. You know, Hispanics are quick learners.

Mr. JONES. I'm well aware of that, Mr. Chairman.

Mr. MARTINEZ. Mr. Weisburg has one quick question for you.

Mr. WEISBERG. Thank you, Mr. Chairman.

Mr. Jones, American Home Products testified in their written statement, "We received approval to hire 166 people. We only hired 78 because the pool of applicants did not have the type of experience or education we would otherwise require." You have heard all the testimony this morning. Does it appear to you that American Home Products engaged in creaming?

Mr. JONES. Well, I'm going to separate the two issues here. I think it's wrong, frankly, for the committee or the Congress to ever question a company doing anything other than selecting the best group of people from a pool of clients that service their needs. I think that's what they're supposed to do, whether it's employment service, JTPA, or welfare clients that we might send them.

I think their job is not to do our job. Their job is in fact to select the best people out of that pool that are going to succeed in their employment market.

Mr. WEISBERG. So it's OK, in your view, for the company to go for the top 10 percent rather than the bottom 50 percent?

Mr. JONES. For the company. I would never question the company or charge them with doing the job that we in the system, at the State, or local, or Federal level ought to do. I think the more valid question that you have both addressed today is whether or not, when they put the contract together, they should have negotiated a mix, whether there should have been a process for determining, OK, high school graduates maybe are OK, but other barriers are involved, other kinds of issues that are in there, so that the pool was more representative of what should happen.

One other thing, though, Congressman Martinez, you've raised a couple of times, and it's always—it is graphic and dramatic—but I would caution us, the standards today in janitorial are in fact moving up to higher levels of reading and math work, and the reason is, while in Puerto Rico things may be in Spanish, the chemicals are not. The chemicals that that person is going to use on cleaning and the things—the machine instructions are not, and a whole lot of the rest of the system.

And we have company after company coming in to us with basic language and literacy problems. Now, we don't normally engage in that just as a sole selector. But I would caution us against suggesting that some of these lower level jobs don't need those standards, because I think, in fact, you're going to find, as time goes along, that those standards, because of EPA regulations, OSHA regulations, everything else, are moving up at a high rate.

Second, most of these companies—I'm not familiar enough with American Home Products—but most of these companies are now reducing job classifications, which means they have a broader encompassment and a broader skill standard that will be applied to it. That's going to make that same issue a little more difficult to simply say that certain occupations don't need training. I'm not comfortable with that.

Mr. MARTINEZ. Well, Ms. Echegoyen really pointed out that, in this particular industry, the technical aspects of cleaning, doing work—because floors are required to be a certain degree of cleanness, et cetera, that those technical aspects of that, yes, would fit in what you're saying.

But, more generally, the point is that, if you need that kind of highly qualified individual, and you're going to set that criteria, you shouldn't be trying to get on-the-job training funds for it. Those funds should be reserved for those people who can take the people that are at the bottom end of the ladder, who really need that disadvantaged—you know, "disadvantaged" has several different meanings. It doesn't mean only economically disadvantaged. It means a person who is disadvantaged because they don't have education.

You mentioned a while ago about high school criteria, that a lot of them are illiterate, and I agree with that. But let me ask you this: Wouldn't someone who didn't even attain a high school diploma even be at greater risk of being more illiterate than the person that at least got that far? I would say yes.

Mr. JONES. Well, in theory that's the case.

Mr. MARTINEZ. Yes. So we have to set some benchmarks, some guidelines, and so we try to do it.

Mr. JONES. Sure.

Mr. MARTINEZ. That's why in the new amendments we said more than one standard, and I think that will help.

Mr. JONES. That's right. That's absolutely right.

Mr. MARTINEZ. The point is that, in Puerto Rico, as I've stated earlier, it's very difficult to choose between the disadvantaged and the disadvantaged, is a better way to put it.

But, like you said, there should have been a negotiated mix. What I'm interested in is, what you're doing, and hopefully you'll bring forth a report that indicates the profile, because one of the questions raised here was, would he have hired those people without the program anyway? Because, if he would have, he certainly didn't need the program, should not have taken advantage of the tax dollar in that program. That's my contention. Because, looking at their sheets that they gave, the requirements sheet, those are pretty high requirements in all of the jobs and in some of them very high.

Mr. JONES. I will reserve judgment, because we are going to look at those people to try to understand how many of them did have other barriers or other issues. But I would—I think—back to counsel's question, I guess, I think it's very difficult to lay off on the company this issue of whether they would have hired them anyway, when these people were, A, unemployed; B, below the poverty guidelines, even in Puerto Rico; and, C, had no work experience.

Now, folks, those folks aren't in the system, and getting them in the system is in fact what we're in business for. They are absolutely legitimate participants, legally, in this program. No question. You can't blame the company at that point. You made the point that you might want the program people to have cross mixed that a little better.

But I'm not comfortable saying those people would have been hired anyway. Let's assume that they went across to the employment service and OJT and they had them do the testing and referring and things, which they can do at no cost, and have people referred. Would we have gotten the same clientele at that point? I don't know the answer to that.

Would these people have been in there or not? Probably not, with those criteria they put in place. They probably—the employment service, I assure you, would have creamed at the highest level for the company. That's the way it's set up, at government money, at no cost.

So do we cut these people out? Obviously, your point is valid, but I'm not comfortable saying they would have been hired anyway.

Mr. MARTINEZ. That's what I'd really like to find out is if, in fact, these people would not have been hired.

Mr. JONES. Sure.

Mr. MARTINEZ. Because it seems, on the face of it, that they may have qualified anyway.

Mr. JONES. We understand that.

Mr. MARTINEZ. I'll tell you the reason I say that is because, in Puerto Rico, the small number of population you have that would fit that criteria anyway, even though it's 56 percent, it's still a small—56 percent isn't that big a percentage—that they would have been able to have, in consideration of the population, that large a pool to look at.

Mr. JONES. Clearly.

Mr. MARTINEZ. Maybe they would have been the same people; maybe not. You know, it's debatable, but really I think your investigation and your studies will determine that one way or the other. I'm very confident that you'll do the kind of a job that we need done.

I have less than 5 minutes to vote. Is there any reason we need to hold Mr. Jones?

Mr. WEISBERG. No.

Mr. MARTINEZ. OK. Well, then, I'm going to adjourn the hearing. Again, thank you.

Bob, it has been nice to see you again.

Mr. JONES. Thank you, Mr. Chairman.

[Whereupon, at 1:40 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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